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Apr. 25, 1995	May 2, 1995	19	May 12, 1995	Oct. 31, 1995	Nov. 7, 1995	46	Nov. 17, 1995
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June 20, 1995	June 27, 1995	27	July 7, 1995	Dec. 26, 1995	Jan. 2, 1996	2	Jan. 12, 1996

Please note: When the Register deadline falls on a State holiday, the deadline becomes 4:30 p.m. on Monday *(the day before).*

Printed by authority of the
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Feb. 1995 – 890 – GA-0891

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED RULE

1) Heading of the Part: Bidder Responsibility, Prequalification and Suspension of Contractors

2) Code Citation: 44 Ill. Adm. Code 950

3) Section Numbers: Proposed Action:

950.110	New Section
950.120	New Section
950.130	New Section
950.140	New Section
950.150	New Section
950.160	New Section
950.170	New Section
950.200	New Section
950.210	New Section
950.300	New Section
950.310	New Section
950.320	New Section
950.330	New Section
950.340	New Section
950.350	New Section
950.360	New Section
950.370	New Section
950.380	New Section
950.390	New Section
950.400	New Section
950.410	New Section
950.420	New Section
950.430	New Section
950.440	New Section

4) Statutory Authority: Implementing and authorized by Section 9.06 of the Capital Development Board Act (Ill. Rev. Stat. 1991, ch. 127, par. 779.6) [20 ILCS 3105/9.06] and authorized by Sections 5 and 6 of the Illinois Purchasing Act (Ill. Rev. Stat. 1991, ch. 127, pars. 132.5 and 132.6) [30 ILCS 505/5 and 6].

5) A Complete Description of the Subjects and Issues Involved: These rules govern contractor prequalification for bidding on Capital Development Board (CDB) construction projects, based on contractor responsibility, as well as prequalification procedures and suspension.

6) Will this proposed rule replace an emergency rule current in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rule contain incorporation by reference? No

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9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This proposed rule does not create or expand the state mandate as defined in Section (b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3].

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: From the date that this notice first appears in the Illinois Register, for a period of 45 days thereafter, interested persons may submit comments or a request to comment, in writing, to:

Claire Gibson, Legal Advisor
Capital Development Board
401 South Spring Street
3rd Floor Wm. G. Stratton Bldg.
Springfield, Illinois 62706
(217) 782-8725

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporation affected: Small businesses engaged in State building construction contracts will be affected.

B) Reporting, bookkeeping or other procedures required for compliance: Section 950.210(c) requires contractors to update significant information in the prequalification application and other CDB documents.

C) Types of professional skills necessary for compliance: None.

13) State reason(s) for this rulemaking if it was not included in either of the two (2) recent regulatory agendas:

The full text of the proposed rule begins on the next page:

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED RULE

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT
CHAPTER XII: CAPITAL DEVELOPMENT BOARD

PART 950
BIDDER RESPONSIBILITY, PREQUALIFICATION AND SUSPENSION OF CONTRACTORS

SUBPART A: BIDDER RESPONSIBILITY AND PREQUALIFICATION

950.110 Purpose
950.120 Policy
950.130 Definitions
950.140 Special Projects
950.150 Sources for Determining Responsibility
950.160 Processing of Contractor Bidder Responsibility and Prequalification Application
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SUBPART B: SUSPENSION, MODIFICATION OR CONDITIONAL PREQUALIFICATION

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950.420 Executive Director
950.430 Request for Reconsideration
950.440 Hearing

AUTHORITY: Implementing and authorized by Section 9.06 of the Capital Development Board Act (Ill. Rev. Stat. 1991, ch. 127, par. 779.6) [20 ILCS 3105/9.06] and authorized by Sections 5 and 6 of the Illinois Purchasing Act (Ill. Rev. Stat. 1991, ch. 127, pars. 132.5 and 132.6) [30 ILCS 505/5 and 6].

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SOURCE: Adopted at 2 Ill. Reg. 30, p. 140, effective July 27, 1978; amended at 4 Ill. Reg. 9, p. 233, effective February 14, 1980; amended at 5 Ill. Reg. 1890, effective February 17, 1981; amended and codified at 8 Ill. Reg. 20299, effective October 1, 1984; emergency amendment at 9 Ill. Reg. 3821, effective March 5 for a maximum of 150 days; amended at 9 Ill. Reg. 10659, effective July 3, 1985; amended at 9 Ill. Reg. 17321, effective October 29, 1985; amended at 12 Ill. Reg. 9860, effective May 27, 1988; amended at 16 Ill. Reg. 12424, effective July 28, 1992; Part repealed, new Part adopted at 19 Ill. Reg. _____, effective _____.

SUBPART A: BIDDER RESPONSIBILITY AND PREQUALIFICATION

Section 950.110 Purpose

The Capital Development Board (CDB) contracts shall be awarded only to responsible contractors. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors and suppliers. In the absence of information clearly indicating that the prospective contractor is responsible, CDB shall make a determination of nonresponsibility. Only responsible contractors shall be prequalified, and all bidders must be prequalified prior to bid openings.

Section 950.120 Policy

As a general proposition, except in instances of statutory exceptions, CDB shall award contracts to the lowest responsible and responsive bidder. However, award of a contract based on the lowest price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a contractor solely because that contractor submits the lowest offer.

Section 950.130 Definitions

The following definitions shall apply to this Part:

"CDB" means the Capital Development Board.

"Contract Requirements" consist of any and all provisions of the CDB contract, including those of the Standard Documents for Construction which include, but are not limited to the following:

1) The timely submittal of all post-award requirements.
2) Material Compliance with all applicable statutory requirements, local, State and Federal laws, environmental and regulatory requirements and CDB Rules and Resolutions.
3) Payment of prevailing wage rate as determined by the Illinois Department of Labor.

4) Adherence to Alternative Dispute Resolution provisions.
5) Material compliance with all Minority and Female Business Enterprise Act requirements and workforce hiring goals.
6) Timely payment to subcontractors and suppliers.
7) Material compliance with project schedules.
8) Maintaining applicable licensing requirements.

"Key Person" means any individual who holds 7 1/2% or more ownership interest in the firm. In the event the firm is owned by another corporation, partnership, trust or business association, any individual within that firm who holds a 7 1/2% or more ownership interest is considered a "Key Person". Regardless of ownership interest any officer, partner, director is considered a "Key Person". This definition also includes any individual who assumes the responsibility of an officer, owner, partner, director, etc., regardless of ownership interest.

"Performance Record" consists of but is not limited to the following:
1) Evidence of material compliance with all CDB contract requirements as referenced.
2) Data indicating the contractor has maintained quality workmanship and has met all contract requirements on previous contracts, private and public.

"Prequalification" means a status assigned by CDB to contractors upon a determination that the contractor is responsible, which is a prerequisite to bidding on CDB contracts.

"Responsible Contractor" is a firm that:
1) Has adequate financial resources to perform the contract, or the ability to obtain them. This includes, but is not limited to, the ability to obtain required bonds and insurance from sureties and insurance companies acceptable to CDB.
2) Is able to comply with the contract requirements, considering the firm's other business obligations.
3) Has a satisfactory performance record.
4) Has a satisfactory record of integrity and business ethics.
5) Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them. This includes, but is not limited to qualified supervisory personnel, and a work force qualified to meet CDB contract work force requirements.
6) Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.
7) Is otherwise qualified and eligible to receive a contract award under applicable laws and regulations.

"Responsive Bidder" means a person or firm who has submitted a bid

that conforms in all material respects to the invitation for bids. Those who submit bids which are not in conformance with the requirements for the invitation for bids will be determined to be non-responsive, in accordance with the Standard Documents for Construction, which factors include, but are not limited to:
1) Failure to be prequalified in accordance with the Standard Documents for Construction.
2) Submission of a bid late, in pencil, or in a manner that reveals the bid price prior to the bid opening (e.g. by facsimile).
3) Submission of a bid that is not in substantial conformance with the bidding documents.
4) Submission of bid security that is not in substantial compliance with the Standard Documents for Construction.

Section 950.140 Special Projects

When a CDB construction project is determined to be so large or specialized that a special prequalification and bidder responsibility determination is appropriate, CDB may set appropriate standards of acceptability different from those set out herein for a special prequalification for that project. Other provisions of this rule shall remain applicable.

950.150 Sources for Determining Responsibility

To determine a contractor's responsibility, CDB may utilize information obtained from one or more of the following sources. In evaluating the information, greater consideration shall be given to the contractor's most recent projects and projects with CDB.

a) Contractor Bidder Responsibility and Prequalification Application form.
   1) Completed application form.
   2) Evidence of bonding capacity meeting CDB criteria.
   3) Adherence to statutory requirements and CDB rules and resolutions.
   4) Work History - reference checks. References provided may result in the verification and documentation by the following methods:
      A) Telephone reference checks.
      B) Reference questionnaire.
b) CDB Work and Performance History Evaluations prepared on both current and past CDB projects by the following:
   1) CDB staff.
   2) Architects/Engineers and Consultants.
   3) Using Agencies.
   4) Other contractors, subcontractors and suppliers.
c) Other Governmental Entities
   CDB may conduct performance history reference checks by contacting federal, State or local governmental entities.
d) Other Sources
   CDB may conduct performance reference checks from any other source in

order to determine responsibility which may include, but are not limited to:

1) Surety/Bonding companies.
2) Financial Institutions.
3) Periodicals.
4) Newspapers.
5) Court Records.
6) Any type of public record.

e) Previous Employment History
For any newly organized firm or a firm with a limited work history, CDB may conduct individual performance reference checks on any or all personnel.

f) Additional Information
CDB may request additional information from the contractor during any phase of the evaluation process.

950.160 Processing of Contractor Bidder Responsibility and Prequalification Application

a) Processing of Contractor Bidder Responsibility and Prequalification Applications by CDB may require up to 45 days.

b) Applications for renewal of prequalification will be sent to contractors 60 days before the expiration of current prequalification. Contractors who do not receive an application are responsible for contacting CDB prior to expiration to request an application. Such applications may require up to 45 days for processing. Those applications nearing the end of the 45 day processing time will be notified accordingly.

c) Applications may be sent to CDB by facsimile, provided that the original application is received by CDB within five business days. Applications sent by facsimile may require up to 45 days for processing.

d) CDB shall review and evaluate each application received, which may include one or more of the following actions:
1) Reviewing to determine whether the application is filled out in accordance with the instructions provided.
2) Contacting work references or any other possible sources of pertinent information.
3) Requesting additional information from the applicant.
4) Reviewing CDB contractor performance evaluations.
5) Meeting with the applicant at the request of CDB or the applicant.

950.170 Ineligibility

A contractor, whether or not previously prequalified with CDB, may be ineligible for prequalification under the following circumstances:

a) The contractor fails to meet statutory or regulatory requirements other than those set out in this regulation.

b) The contractor has inadequate relevant experience in construction contracting to undertake CDB projects. In determining whether a contractor has adequate relevant experience, CDB will consider the size, type, number, and recency of past private and public contracts of the firm, its predecessors, or key persons with the firm.

c) The contractor has inadequate resources to meet the CDB work force requirements stated at paragraph 00014 of CDB's Standard Documents for Construction. CDB shall not prequalify any contractor who has the appearance of being a broker, rather than a conventional construction business. In determining whether a contractor is a broker or a firm with inadequate resources, CDB may consider one or more of the following:
1) Whether the contractor maintains and works from a separate conventional office which is not a residence or offices for other businesses.
2) Whether the contractor maintains a full-time office and construction staff consisting of clerical, managerial, and supervisory personnel.
3) Whether key persons with the firm have an educational and work experience background that makes the key persons sufficiently expert and knowledgeable to carry out CDB construction projects.
4) Whether the contractor owns equipment, tools, machinery, materials or supplies used on construction projects.
5) Whether the contractor has financial resources related to or generated by the construction business.
6) Whether the contractor has historically subcontracted for a percentage of the work in construction contracts exceeding the requirements of CDB contracts.
7) Whether key persons with the firm are engaged in non-construction businesses.

SUBPART B: SUSPENSION, MODIFICATION OR CONDITIONAL PREQUALIFICATION

950.200 Actions on Prequalification Status

At any time, CDB may consider whether action should be taken concerning a contractor's prequalification. Actions that may be taken include one or more of the following:

a) Interim or Emergency Suspension or Modification
1) CDB may summarily suspend or modify prequalification, which takes effect when notice of suspension or modification is issued, pursuant to authority granted by Section 16 of the Capital Development Board Act (20 ILCS 3105/16) as follows: Among the bases for an interim or emergency suspension or modification of prequalification are:
A) A finding by the Board that the public interest, safety or welfare requires a summary suspension or modification of a prequalification without hearings.

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B) The occurrence of an event or series of events which, in the Board's opinion, warrants a summary suspension or modification of a prequalification without a hearing including, without limitation:
   i) the indictment of the holder of the prequalification by a State or federal agency or other branch of government for a crime;
   ii) the suspension or modification of a license or prequalification by another State agency or federal agency or other branch of government after hearings;
   iii) a material breach of a contract made between the Board and an architect, engineer or contractor; and
   iv) the failure to comply with State law including, without limitation, the Minority and Female Business Enterprise Act, the prevailing wage requirements, and the Steel Products Procurement Act.

2) Within 30 days of the issuance of an order of suspension or modification, CDB shall initiate procedures as set out in Section 950.400 below.

b) Debarment
CDB may debar a contractor to exclude it from contracting for CDB contracts as authorized by statute. The period of debarment shall be as authorized by law.

c) Modification of Prequalification
CDB may modify or limit a contractor's prequalification for bidding as appropriate, including, but not limited to one or more of the following:
1) Limiting the dollar amount a contractor may bid for a specified period of time, or until a current contract is substantially complete.
2) Limiting the number of CDB contracts a contractor may enter into for a specified period of time, or until a current contract is substantially complete.
3) Limiting the aggregate dollar amount of contracts the contractor may enter into, considering both public and private contracts.
4) Imposing limits as set forth above pending performance on the contractor's next CDB contract(s), in instances where the contractor has no current CDB contracts.

d) Conditional Prequalification
CDB may condition prequalification (which may be otherwise limited) on the contractor's successful utilization of a management plan, evaluations, conferences, or other methods designed to achieve satisfactory performance or compliance with contract requirements.

e) Suspension
CDB may suspend a contractor's prequalification to disqualify a contractor temporarily from contracting with CDB, for a period of time up to one year. The contractor's failure to timely pursue administrative action as provided by Sections 950.400 through 950.440 shall constitute consent of the contractor to CDB's action.

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950.210 Causes for Suspension, Modification or Conditional Prequalification

CDB may suspend, modify prequalification or issue a conditional prequalification when a preponderance of the evidence supports one or more of the following:
a) Failure to satisfactorily perform work on CDB contract(s), private contract(s), or other governmental contracts.
b) Breach of the terms of a CDB contract(s), private contract(s), or other governmental contract(s), including but not limited to causes set out in CDB's Standard Documents for Construction.
c) Making false or misleading statements, or failing to disclose or update significant information in connection with CDB procedures or documents, including but not limited to the prequalification application.
d) Violation of civil or criminal Federal or State statutes or administrative rules and regulations. In the case of criminal violations, indictment shall constitute adequate evidence for suspension.
e) Financial instability which may be evidenced by bankruptcy, failure to timely pay subcontractors, difficulty in obtaining acceptable bonding, attempts to assign contract proceeds, or other indications of serious business management deficiencies.
f) Failure to understand, accept or utilize CDB procedures and standards, which results in the extraordinary expenditure of CDB resources.
g) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or conduct indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor.
h) Suspension, debarment, or modification of prequalification by any other governmental body.
i) Any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor.

SUBPART C: APPLICATION OF CDB ACTION

950.300 General

Suspension, debarment, nullification of prequalification, modification of prequalification, or issuance of conditional prequalification by CDB is applicable to a contractor's direct contracts with CDB and to subcontracts on CDB projects, unless otherwise determined under Section 950.360.

950.310 Violation of CDB Order

When a contractor works as a subcontractor on a CDB project in violation of a

CDB order of suspension, debarment, or nullification, CDB may extend the term of suspension, debarment, or nullification.

950.320 Nullification of Prequalification

When CDB determines that a contractor has knowingly made a material misrepresentation in its application for prequalification, the contractor may not seek prequalification for a period of three years.

a) When the contractor has not been previously prequalified, or its prequalification has expired before the submittal of the application, the three year period shall begin on the date of the submittal of the application.

b) When the contractor has a current prequalification, issued in error, on the date of discovery of the misrepresentation, the three year period shall begin on the date the current prequalification was issued.

c) CDB will notify the contractor of the nullity. The contractor may, within 30 days of notification, submit a written explanation with supporting documentation for CDB's review.

d) CDB may cancel awards or terminate any contracts awarded that were based upon the application with misrepresentations.

e) A material misrepresentation is made by knowingly submitting any untrue, misleading or deceptive information or document containing such information, or by the concealment, suppression or omission of any information, in or from a prequalification application, which causes CDB to act differently than it would have if it had known the undisclosed or true information.

950.330 Denial of Award of Contract

Notwithstanding any other provisions in this Part, if CDB finds a contractor nonresponsible due to one or more causes set out in Section 950.210 above, CDB may deny the contractor the award of a contract, with or without further action on the contractor's prequalification.

950.340 Debarment

Following a period of debarment, when a contractor submits an application for prequalification to CDB, the application shall be deemed to be a first-time application rather than one for renewal of prequalification

950.350 Reapplication for Prequalification

When a contractor submits an application for prequalification to CDB during or following a period of suspension, nullification of prequalification, modification of prequalification, or conditional prequalification, the contractor must affirmatively demonstrate its responsibility, including demonstrating that the reason for imposition of suspension, nullification,

modification, or condition has been remedied.

950.360 Extension of CDB Action

The effect of action imposed by CDB may extend to all affiliates, branches, subsidiaries, divisions, or parent firms of the contractor, and to any firm in which the contractor or its key persons have a legal or beneficial interest.

950.370 Effect on Current Contracts

Current CDB contracts may be terminated when a contractor is determined to be nonresponsible and it is in the public interest to do so, whether or not the nonresponsibility has a direct connection with the current contract. Contracts may be terminated with or without further action on the contractor's prequalification.

950.380 Basis of Decisions

CDB shall make determinations as appropriate concerning the substance of a contractor's business as opposed to its form, and base its decisions on the substance. When a contractor attempts to evade the effects of a possible or actual finding of nonresponsibility by changes of address, multiple addresses, changes in personnel or their titles, formation of new companies, or by other devices, CDB may take action pursuant to Sections 950.210, 950.160 and 950.310 above.

950.390 Settlement

Notwithstanding any provision of this Part, the parties to any contested matter concerning contractor responsibility may at any time enter into an agreement to resolve responsibility issues by settlement.

SUBPART D: PROCEDURES

950.400 Review

When information which places a contractor's responsibility in question comes to CDB's attention, CDB shall review the facts and documentation. If further inquiry is desirable, it may do such further inquiry, which may result in an informal conference with the contractor and its appropriate staff members with CDB.

950.410 Conference

When requesting a conference with a contractor, CDB's letter shall request that the contractor bring to the conference any documents, personnel, or other information pertinent to responsibility that it wishes for CDB to consider. The contractor may bring its attorney to the conference, if desired. Within a

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED RULE

reasonable time in advance of the conference, CDB shall furnish the contractor with all information in its possession pertinent to the responsibility issue, and shall further advise the contractor in writing that it has the right to inspect its full prequalification file.

950.420 Executive Director

Following CDB's conference with the contractor, the committee shall forward a recommendation as to a determination of responsibility to the Executive Director for consideration. The contractor will be notified in writing of the Executive Director's decision.

950.430 Request for Reconsideration

Within 15 days of receipt of the Executive Director's decision, the contractor shall make any further appeal to the Executive Director in writing. The appeal shall request reconsideration of the decision and shall include as attachments any and all supporting evidence not previously submitted. CDB shall respond to the request for reconsideration within 15 days of CDB's receipt.

950.440 Hearing

Within 15 days of receipt of the Executive Director's final decision pursuant to a request for reconsideration, the contractor may petition the Executive Director for an administrative hearing. Upon timely receipt of such petition, a hearing shall be granted and held in accordance with Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100] and the subpoena powers granted by Section 9.08b of the Capital Development Board Act [20 ILCS 3105/9.08b].

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Prequalification and Suspension of Contractors

2) Code Citation: 44 Ill. Adm. Code 950

3)

Section Numbers:	Proposed Action:
950.190	Repeal
950.200	Repeal
950.500	Repeal
950.510	Repeal
950.520	Repeal

4) Statutory Authority: Implementing and authorized by Section 9.06 of the Capital Development Board Act (Ill. Rev. Stat. 1991, ch. 127, par. 779.6) [20 ILCS 3105/9.06] and authorized by Sections 5 and 6 of the Illinois Purchasing Act (Ill. Rev. Stat. 1991, ch. 127, pars. 132.5 and 132.6) [30 ILCS 505/5 and 6].

5) A Complete Description of the Subjects and Issues Involved: This proposed repealer will be replaced by new proposed rules published in this issue of the Illinois Register.

6) Will this proposed repealer replace an emergency rule currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed repealer contain incorporation by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives? This rulemaking does not create or expand the state mandate as defined in Section (b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203) [30 ILCS 805/3].

11) Time, Place, and Manner in which interested persons may comment on this rulemaking: From the date that this notice first appears in the Illinois Register, for a period of 45 days thereafter, interested persons may submit comments or a request to comment, in writing, to:

Claire Gibson, Legal Advisor
Capital Development Board
3rd Floor, William G. Stratton Bldg.
Springfield, Illinois 62703
217/782-8725

12) Initial Regulatory Flexibility Analysis:

(A) Types of small businesses, small municipalities and not for profit

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED REPEALER

corporations affected: Small businesses engaged in State building construction contracts will be affected.

(B) Reporting, bookkeeping or other procedures required for compliance: None

(C) Types of professional skills necessary for compliance: None

The full text of the proposed repealer begins on the next page:

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED REPEALER

TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT
SUBTITLE B: SUPPLEMENTAL PROCUREMENT RULES
CHAPTER XII: CAPITAL DEVELOPMENT BOARD

PART 950
PREQUALIFICATION AND SUSPENSION OF CONTRACTORS (REPEALED)

SUBPART A: PREQUALIFICATION

Section
950.110 Prequalification of Contractors (Repealed)
950.120 Factors Considered (Repealed)
950.130 Application for Prequalification (Repealed)
950.140 Opinion of Certified Public Accountant (Repealed)
950.150 Contractor Misrepresentation (Repealed)
950.160 Supplemental Information (Repealed)
950.170 Term of Prequalification Rating (Repealed)
950.180 Renewal of Prequalification Rating (Repealed)
950.190 Notice to Board (Repealed)
950.200 Effect of Failure to Notify Board (Repealed)
950.210 Temporary Financial Prequalification (Repealed)
950.220 Term of Temporary Financial Prequalification Rating (Repealed)
950.230 Fraudulent Statement of Intent (Repealed)
950.240 Formula for Prequalification Rating (Repealed)
950.250 Increase or Decrease of Financial Prequalification Rating (Repealed)
950.260 Aggregate Dollar Amount of Contracts (Repealed)
950.270 Contracts More Than Seventy Percent (70%) Completed (Repealed)
950.280 Joint Ventures (Repealed)
950.290 Appeal of Prequalification Rating (Repealed)
950.300 Prequalification Without a Certified Financial Statement (Repealed)

SUBPART B: SUSPENSION

Section
950.500 Suspension Procedures (Repealed)
950.510 Causes for Suspension (Repealed)
950.520 Severability (Repealed)

AUTHORITY: Implementing and authorized by Section 9.06 of the Capital Development Board Act (Ill. Rev. Stat. 1991, ch. 127, par. 779.6) [20 ILCS 3105/9.06] and authorized by Sections 5 and 6 of the Illinois Purchasing Act (Ill. Rev. Stat. 1991, ch. 127, pars. 132.5 and 132.6) [30 ILCS 505/5 and 6].

SOURCE: Adopted at 2 Ill. Reg. 30, p. 140, effective July 27, 1978; amended at 4 Ill. Reg. 9, p. 233, effective February 14, 1980; amended at 5 Ill. Reg. 1890, effective February 17, 1981; amended and codified at 8 Ill. Reg. 20299, effective October 1, 1984; emergency amendment at 9 Ill. Reg. 3821, effective

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED REPEALER

March 5 for a maximum of 150 days; amended at 9 Ill. Reg. 10659, effective July 3, 1985; amended at 9 Ill. Reg. 17321, effective October 29, 1985; amended at 12 Ill. Reg. 9860, effective May 27, 1988; amended at 16 Ill. Reg. 12424, effective July 28, 1992; Part repealed at 19 Ill. Reg. _____, effective _____.

Section 950.190 Notice to Board

a) If, during any period that a financial prequalification rating is in effect, the contractor experiences a substantial change in his/her financial condition, the contractor shall notify the Board in writing of the change at the time the change occurs so that the financial prequalification rating may be adjusted, or suspended, accordingly. The following are examples of changes considered substantial that must be reported to the Board:
   1) Rendition of a substantial judgement against the contractor in a lawsuit;
   2) Default of a loan agreement which jeopardizes receivables, inventories and fixed assets pledged as collateral;
   3) Filing of a petition in bankruptcy; or
   4) Any other occurrence which renders performance of its contract with the Board difficult or impossible.

b) If during any period that a financial prequalification rating is in effect, the contractor is found guilty of, or pleads guilty or nolo contendere to, a violation of Sections 11.1 through and including 11.4 of the Illinois Purchasing Act; or to any criminal violation of a State or Federal law which indicates a lack of responsibility including embezzlement, theft, forgery, bribery, falsification or destruction or records, receiving stolen property; or to any criminal violation of an antitrust law, the contractor will notify the Executive Director of the conviction or plea in writing within 30 days of the time the conviction or plea is entered.

Section 950.200 Effect of Failure to Notify Board

Failure to notify the Board as required in Section 950.190 shall constitute sufficient grounds for suspending a contractor from bidding for not more than one (1) year.

SUBPART B: SUSPENSION

Section 950.500 Suspension Procedures

When a contractor fails to adhere to any of the Rules or procedures of the Board or acts in an irresponsible manner on a Board project, and such acts or omissions jeopardize the interests of the State of Illinois in responsible solicitation, execution and administration of public contracts, proceedings to suspend the contractor shall be initiated by the Board. The factors set forth

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED REPEALER

in Section 950.510 shall be used by the Board in determining whether to recommend the initiation of suspension proceedings. Suspension proceedings shall be conducted according to the requirements of 71 Ill. Adm. Code 100. Suspension shall be for a period not in excess of one (1) year.

Section 950.510 Causes for Suspension

The following are examples of acts or omissions by contractors which constitute grounds for suspension. No contractor shall:

a) engage in fraud, bribery, embezzlement, theft, collusion, conspiracy, anti-competitive activity or other misconduct indicating a lack of responsibility which seriously and directly affects the question of present responsibility relating to public service or public contracts or subcontracts thereunder, whether or not such misconduct or offense is in connection with a Board contract or any contract requiring Board approval; or

b) make a false statement in the bidder's application for prequalification or any forms or affidavits required in consequence thereof; or

c) violate any Rules or Resolutions of the Board, including but not limited to the Contractor's Prequalification Instructions and Application Forms; or

d) be suspended by another State agency as a result of the contractor's violation of the rules and regulations of that State agency promulgated pursuant to Section 5 of the Purchasing Act; or

e) fail to notify the Board of a substantial change in financial condition or of the conviction or the entry of a plea of guilty or nolo contendere as required by Section 950.190; or

f) fail to perform its contract with the Board in accordance with the following criteria:
   1) administer and supervise the progress and work incorporated into the project to insure compliance with contract documents;
   2) promptly file all required documentary material;
   3) adhere to the construction schedule specified in contract documents;
   4) employ supervisory personnel who function with that degree of skill accepted as the satisfactory and usual standard in the construction industry;
   5) utilize construction equipment and materials on the project of such quality so as to satisfactorily perform the contract without delay or defective construction;
   6) cooperate with other contractors and subcontractors on the project in coordinating the overall performance of the contract;
   7) observe all State and Federal safety and sanitary laws;
   8) comply with plans, specifications, general conditions and contract documents;
   9) during the course of the performance of its work, comply with all requirements of the Illinois Human Rights Act, Ill. Rev. Stat.

CAPITAL DEVELOPMENT BOARD

NOTICE OF PROPOSED REPEALER

1983, ch. 68, par. 1-101 et seq.).

Section 950.520 Severability

If any section, sentence or clause of this Part is for any reason held invalid or unconstitutional, the validity of the remaining portions of this Part shall not be affected.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: The Travel Regulation Council

2) Code Citation: 80 Ill. Adm. Code 3000

3) Section number: Proposed Action:

3000.Appendix A Amend

4) Statutory Authority: Implementing and authorized by Sections 12, 12-2 and 12-3 of the State Finance Act (Ill. Rev. Stat. 1991, ch. 127, pars. 148, 148-2 and 148-3) [30 ILCS 105/12, 12-2 and 12-3].

5) A Complete Description of the Subjects and Issues Involved: The proposed amendment will increase many of the allowable rates used by State employees when traveling.

6) Will this proposed amendment replace an emergency rule currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Does this proposed amendment contain incorporations by reference? No.

9) Are there any other proposed amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: Rulemaking does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments within 45 days of the date of publication to:

Stephen W. Seiple
720 Stratton Office Building
Springfield, IL 62706
(217)782-9669

12) Initial Regulatory Flexibility Analysis: Does not apply to small businesses.

13) State reasons for this rulemaking if it was not included in either of the two (2) most recent regulatory agendas: This amendment was included in the recent regulatory agenda.

The full text of the Proposed Amendments begins on the next page.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE I: GENERAL TRAVEL CONTROL
CHAPTER IV: TRAVEL REGULATION COUNCIL

PART 3000
THE TRAVEL REGULATION COUNCIL

SUBPART A: GENERAL

Section
3000.100 Authority
3000.110 Philosophy
3000.120 Policy
3000.130 Scope and Interpretation
3000.140 Definitions

SUBPART B: TRAVEL CONTROL SYSTEM

Section
3000.200 Travel Control System
3000.210 Designation of Headquarters
3000.220 Expenses at Headquarters or Residence
3000.230 Preparation and Submission of Vouchers or Travel Expenses

SUBPART C: TRANSPORTATION

Section
3000.300 Modes of Transportation
3000.310 Routing

SUBPART D: LODGING

Section
3000.400 Lodging Allowances
3000.410 Least Costly Lodging
3000.420 Conference Lodging
3000.430 Employee Owned or Controlled Housing

SUBPART E: PER DIEM-MEALS

Section
3000.500 Per Diem Allowance
3000.510 Meal Allowance

SUBPART F: MISCELLANEOUS RULES

Section
3000.600 Reimbursable and Non-Reimbursable Expenses

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

3000.610 Expenses Related to Transportation
3000.620 Receipts Required
3000.630 Meals for Other Persons

SUBPART G: EXCEPTIONS

Section
3000.700 Exceptions to the Rules
3000.710 Board-Agency Rules
3000.720 Non-Required Travel

APPENDIX A Reimbursement Schedule

AUTHORITY: Implementing and authorized by Sections 12, 12-2 and 12-3 of the State Finance Act (Ill. Rev. Stat. 1991, ch. 127, pars. 148, 148-2 and 148-3) [30 ILCS 105/12, 12-2 and 12-3].

SOURCE: Emergency rules adopted at 10 Ill. Reg. 12697, effective July 2, 1986, for a maximum of 150 days; adopted at 10 Ill. Reg. 18188, effective January 1, 1987; peremptory amendment at 11 Ill. Reg. 14854, effective August 25, 1987; amended at 12 Ill. Reg 11626, effective July 1, 1988; amended at 14 Ill. Reg. 10014, effective July 1, 1990; amended at 19 Ill. Reg. _____, effective _____.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

Section 3000.APPENDIX A Reimbursement Schedule

The following rates are effective for the Travel Control Boards. The rates will be reviewed annually to determine necessary adjustments.

Type of Reimbursement	Rate
Mileage	
Auto	See Section 3000.300(f)(2)
Plane	40e
Per Diem/Meals	
~~Breakfast~~	~~$4.50~~
~~Lunch~~	~~$4.50~~
~~Dinner~~	~~$15.00~~
~~Per Diem~~	~~$24.00~~
Within the State of Illinois	
Breakfast	$5.50
Lunch	$5.50
Dinner	$17.00
Per Diem -- Quarter	$7.00
Per Diem -- Day	$28.00
Outside the State of Illinois	
Breakfast	$6.50
Lunch	$6.50
Dinner	$19.00
Per Diem -- Quarter	$8.00
Per Diem -- Day	$32.00
Lodging	
~~Downstate~~	~~$50.00~~
~~Chicago Metro (Cook, DuPage, Kane, Lake, McHenry, Will Counties)~~	~~$60.00~~
Chicago Metro	
Counties of Cook, Dupage, Kane,	
Lake, McHenry, Will	80.00
Downstate	
Counties of Champaign, Kankakee,	
LaSalle, McLean, Macon, Madison	
Peoria, St. Clair, Sangamon, Tazewell,	
and Winnebago	$60.00

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NOTICE OF PROPOSED AMENDMENT

All other downstate counties	$50.00
Out-of-State	~~$90.00~~ $110.00
Out-of-Country	Actual Reasonable

(Source: Amended at 19 Ill. Reg. _____, effective _____)

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

1) Heading of the Part: Travel

2) Code Citation: 80 Ill. Adm. Code 2800

3) Section number: 2800.Appendix A — Proposed Action: New

4) Statutory Authority: Implementing and authorized by Sections 12, 12-1, 12-2, and 12-3 of the State Finance Act (Ill. Rev. Stat. 1991, ch. 127, par. 148, 148-1, 148-2, and 148-3) [30 ILCS 105/12, 12-1, 12-2 and 12-3] and authorized by The Travel Regulation Council (80 Ill. Adm. Code 3000).

5) A Complete Description of the Subjects and Issues Involved: The proposed amendment will update the travel reimbursement rates applicable to employees subject to the Governor's Travel Control Board.

6) Will this proposed amendment replace an emergency rule currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Does this proposed amendment contain incorporations by reference? No.

9) Are there any other proposed amendments pending on this Part? No.

10) Statement of Statewide Policy Objectives: Rulemaking does not affect units of local government.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments within 45 days of the date of publication to:

Stephen W. Seiple
720 Stratton Office Building
Springfield, IL 62706
(217) 782-9669

12) Initial Regulatory Flexibility Analysis: Does not apply to small businesses.

13) State reasons for this rulemaking if it was not included in either of the two (2) most recent regulatory agendas: This amendment was included in the recent regulatory agenda.

The full text of the Proposed Amendments begins on the next page.

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES
SUBTITLE I: GENERAL TRAVEL CONTROL
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES/
GOVERNOR'S TRAVEL CONTROL BOARD

PART 2800
TRAVEL

SUBPART A: GENERAL

Section
2800.100 Definitions
2800.110 Application and Interpretation

SUBPART B: TRAVEL CONTROL SYSTEM

Section
2800.200 Travel Control System
2800.210 Travel Coordinator
2800.220 Travel Authority
2800.230 Government Charge Cards
2800.235 Expenses at Headquarters or Residence
2800.240 Preparation and Submission of Travel Vouchers
2800.250 Approval and Submission of Travel Vouchers
2800.260 Items Directly Billed
2800.270 Conference Registration Fees

SUBPART C: TRANSPORTATION EXPENSES

Section
2800.300 Incidental Expenses for Private and State Owned Automobiles

SUBPART D: LODGING

Section
2800.400 Conference Lodging
2800.410 Employee Owned or Controlled Housing

SUBPART E: PER DIEM MEALS

Section
2800.500 Conference Meals

SUBPART F: MISCELLANEOUS RULES

Section
2800.600 Lack of Receipts
2800.650 Headquarter Designation for Agency Heads

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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SUBPART G: EXCEPTIONS TO THE RULES

Section
2800.700 Special Exceptions-Requested in Advance
2800.710 Ex Post Facto Exceptions

Appendix A Reimbursement Schedule

AUTHORITY: Implementing and authorized by Sections 12, 12-1, 12-2, and 12-3 of the State Finance Act (Ill. Rev. Stat. 1991, ch. 127, par. 148, 148-1 148-2, and 148-3) [30 ILCS 105/12, 12-1, 12-2 and 12-3] and authorized by the Travel Regulation Council (80 Ill. Adm. Code 3000).

SOURCE: Amended March 11, 1976; amended at 2 Ill. Reg. 30, p. 215, effective August 1, 1978; new rules adopted at 4 Ill. Reg. 28, p. 155, effective July 1, 1980; old rules repealed at 4 Ill. Reg. 30, p. 1224, July 1, 1980; amended at 5 Ill. Reg. 150, effective January 1, 1981; amended at 6 Ill. Reg. 6682, effective July 1, 1982; amended at 7 Ill. Reg. 9205, effective August 1, 1983; amended at 8 Ill. Reg. 127, 130, effective January 1, 1984; amended at 8 Ill. Reg. 14243, effective August 1, 1984; codified at 8 Ill. Reg. 19350; amended at 10 Ill. Reg. 18014, effective October 6, 1986; Part repealed, new Part adopted at 12 Ill. Reg. 738, effective January 15, 1988; emergency amendment at 15 Ill. Reg. 13196, effective September 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 17981, effective November 27, 1991; amended at 16 Ill. Reg. 4831, effective March 12, 1992; amended at 16 Ill. Reg. 13823, effective September 1, 1992; amended at 18 Ill. Reg. 36, effective January 1, 1995; amended at 19 Ill. Reg. _____, effective _____

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

NOTICE OF PROPOSED AMENDMENT

Section 2800.APPENDIX A Reimbursement Schedule

The following rates are effective for Agencies under the jurisdiction of the Board.

Type of Reimbursement		Rate
Auto		See Section 3000.300(f)(2) of the Travel Regulation Council Rules
Plane		$0.40/mile
Per Diem/Meals		
Within the State of Illinois		
	Breakfast	$ 5.50
	Lunch	$ 5.50
	Dinner	$ 17.00
	Per Diem -- Quarter	$ 7.00
	Per Diem -- Day	$ 28.00
Outside the State of Illinois		
	Breakfast	$ 6.50
	Lunch	$ 6.50
	Dinner	$ 19.00
	Per Diem -- Quarter	$ 8.00
	Per Diem -- Day	$ 32.00
Lodging		
Chicago Metro		
	Counties of Cook, Dupage, Kane, Lake, McHenry, Will	$ 80.00
Downstate Illinois		$ 50.00
Out-of-State		
	Washington, D.C. (also includes the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince Georges in Maryland) and New York City (includes the boroughs of Bronx, Brooklyn,	$110.00

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Manhattan, Queens, and Staten Island; Nassau and Suffolk Counties)	
All other out-of-state locations	$ 90.00
Out-of-Country	Actual Reasonable

(Source: Added at 19 Ill. Reg. _____, effective _____)

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: General Conditions of State of Illinois Grants for Nonhazardous Solid Waste Planning and Enforcement

2) Code Citation: 35 Ill. Adm. Code Part 871

3) Section Numbers: Proposed Action:

871.101	Amended
871.102	Amended
871.201	Amended
871.202	Amended
871.203	Amended
871.205	Amended
871.301	Amended
871.302	Amended
871.303	Amended
871.304	Amended
871.305	Amended
871.402	Amended
871.403	Amended
871.501	Amended
871.502	Amended
871.503	Amended
871.601	Amended
871.602	Amended
871.603	Amended
871.604	Repealed
871.605	Amended
871.Appendix A	Amended
871.Appendix B	Amended

4) Statutory Authority: Section 22.15 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.15) [415 ILCS 5/22.15].

5) A Complete Description of the Subjects and Issues Involved: Section 22.15(g) of the Environmental Protection Act (Act) authorizes the Agency to provide financial assistance from the Solid Waste Management Fund to units of local government for the management of municipal waste. Funding for up to 70% of the total project costs, up to $500,000, is available from the Agency for each unit of local government.

Revisions are being made to the grant rules to make planning requirements consistent with the provisions of the Solid Waste Planning and Recycling Act (SWPRA). This law mandates that counties develop, adopt, and implement long-term plans for the management of only municipal waste. Although the Act authorizes the Agency to provide financial assistance to eligible applicants for planning for the management of nonhazardous solid waste or municipal waste, the rules are being revised to incorporate the

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

planning provisions from the SWPRA for only municipal waste to ensure consistency in the planning process. Therefore, references to planning grants include only municipal waste.

No recent legislative changes have been made that affect the scope of the enforcement grant program. The Act authorizes the Agency to make financial assistance available to eligible applicants for local inspection and enforcement activities at nonhazardous solid waste disposal sites. In an attempt to ensure consistency with the municipal waste planning efforts local governments are undertaking, references to enforcement grants will be for nonhazardous solid waste or municipal waste.

Part 871 rules provide for general conditions for municipal waste management planning and nonhazardous solid and municipal waste enforcement grants. The general conditions include provisions for noncompliance with grant conditions; requirements for subagreements; requirements applicable to project initiation and amendment; and access, auditing and records.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rule (amendment, repealer) contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: These proposed grant rules do not create or enlarge a State mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203(b) [30 ILCS 805/3(b)], in that it is a voluntary grant program.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking. Persons who wish to submit written comments on these proposed rules may submit them in writing by no later than 45 days after publication of this notice to:

Ms. Kimberly Robinson
Environmental Protection Agency
Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276
217/782-3397

12) Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Business Assistance Office of the

ENVIRONMENTAL PROTECTION AGENCY

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Department of Commerce and Community Affairs: N/A

B) Types of small businesses affected: Small businesses are not eligible to apply for these grants; therefore, no small businesses are affected. The law allows only units of local government to apply for waste management grants.

C) Reporting, bookkeeping or other procedures required for compliance: Provisions for grant reporting and bookkeeping are included in 35 Ill. Adm. Code 871.501 and 870.209. Grantees may submit payment requests to the Agency in accordance with the schedule in the grant agreement. Unless otherwise specified in the grant agreement, payment requests and progress reports shall be submitted on a quarterly basis for enforcement grants, and on a monthly basis for planning grants.

The proposed rules repeal 35 Ill. Adm. Code 871.604, as the provisions included therein are repetitive of 35 Ill. Adm. Code 870.209 and 870.308.

D) Types of professional skills necessary for compliance: Grantee personnel with a solid waste management background, or grant administration or planning experience may be able to produce the required grant outputs. In addition, persons wishing to enter into an agreement with a grantee to complete the required grant outputs must have adequate experience or the ability to obtain such experience, prior to project initiation, in solid waste planning, data collection and interpretation, report preparation, and a proven record of meeting schedules and budgets.

The full text of the Proposed Rule begins on the next page:

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 871
GENERAL CONDITIONS OF STATE
OF ILLINOIS ~~GRANTS FOR NONHAZARDOUS SOLID~~ MUNICIPAL
WASTE PLANNING AND NONHAZARDOUS SOLID WASTE OR MUNICIPAL WASTE ENFORCEMENT
GRANTS

SUBPART A: INTRODUCTION

Section
871.101 Purpose
871.102 Definitions
871.103 Severability

SUBPART B: LIABILITIES AND REMEDIES FOR FAILURE
TO COMPLY WITH GRANT CONDITIONS

Section
871.201 Noncompliance with Grant Conditions
871.202 Stop-Work Order
871.203 Termination
871.204 Waiver of Conditions
871.205 Covenant Against Contingent Fees
871.206 Statutory Conditions

SUBPART C: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS OF GRANTEE

Section
871.301 General Conditions for all Subagreements
871.302 Contracts for Personal and Professional Services - Professional Consultant Agreements
871.303 Compliance with Procurement Requirements
871.304 Disputes
871.305 Indemnity

SUBPART D: REQUIREMENTS APPLICABLE TO INITIATION AND AMENDMENT

Section
871.401 Project Initiation
871.402 Project Changes
871.403 Termination of Delegation Agreement

SUBPART E: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS

Section

ENVIRONMENTAL PROTECTION AGENCY

NOTICE OF PROPOSED AMENDMENTS

871.501 Access
871.502 Audit and Records
871.503 Reports

SUBPART F: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

Section
871.601 Determination of Allowable Costs
871.602 Amount of Grant-Percentage of Approved Allowable Costs
871.603 Use of Grant and Payment of ~~Non-Allowable~~ Unallowable Costs
871.604 Grant Payment Schedule (Repealed)
871.605 Other Federal or State Grants

APPENDIX A Required Provisions-- Professional ~~Consultant~~ Contractor Agreements
APPENDIX B Procedures for Determination of Indirect Costs and Indirect Cost Rates

AUTHORITY: Implementing and authorized by Section 22.15 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.15) [415 ILCS 5/22.15].

SOURCE: Adopted at 11 Ill. Reg. 18158, effective October 23, 1987; amended at 14 Ill. Reg. 17201, effective October 9, 1990; amended at 19 Ill. Reg. _____, effective _____.

SUBPART A: INTRODUCTION

Section 871.101 Purpose

a) Section 22.15 of the Environmental Protection Act (Ill. Rev. Stat. ~~1989~~ 1991, ch. 111 1/2, par. 1022.15) [415 ILCS 5/22.15] authorizes the Agency to:
   1) *Provide financial assistance to units of local government in planning for the management of nonhazardous solid waste or municipal waste where alternatives to disposal of nonhazardous solid waste or municipal waste in a sanitary landfill will receive full evaluation and consideration in the planning process; or in plans prepared pursuant to the local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act;* (section 22.15(g) of the Act); *and*
   2) *To provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r) at nonhazardous solid waste or municipal waste disposal sites.* (Section 22.15(h) of the Act).

b) The rules set forth in this Part constitute conditions which apply to any agreement through which the Agency provides the financial assistance described in subsection (a) above for:

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1) ~~planning~~ Planning for the management of ~~nonhazardous solid waste~~ municipal waste in accordance with Section 22.15(g) of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.15(g)) [415 ILCS 5/22.15(g)]; and

2) ~~inspecting~~ Inspection, investigation and enforcement activities at nonhazardous solid waste or municipal waste disposal sites in accordance with Section 22.15(h) of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.15(g)) [415 ILCS 5/22.15(g)].

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.102 Definitions

a) For purposes of this Part, the words and terms used in this Part shall have the meanings below. Words and terms not defined in this Part ~~Unless specified otherwise, all terms~~ shall have the meanings set forth ~~in the Environmental Protection Act~~ 35 Ill. Adm. Code 870. Words and terms not defined in this Part and not defined in 35 Ill. Adm. Code 870 shall have the meanings as defined in the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq.) [415 ILCS 5].

b) For purposes of this Part, the following definitions apply.

"Act" ~~The~~ or "Environmental Protection Act" means the Environmental Protection Act (Ill. Rev. Stat. ~~1989~~ 1991, ch. 111 1/2, par. 1001 et seq.) [415 ILCS 5].

"Applicant" means the unit of local government that is applying for a municipal waste planning or nonhazardous solid or municipal waste enforcement grant under Section 22.15 of the Act.

"Contractor" means ~~The~~ the person, as defined by Section 3.26 of the Act, to whom a subagreement is awarded.

"Delegation ~~Agreement~~ agreement" means an ~~An~~ agreement authorized by Section 4(r) of the Act (Ill. Rev. Stat. ~~1989~~ 1991, ch. 111 1/2, par. 1004(r)) [415 ILCS 5/4(r)], under which the Agency may delegate inspection, investigation and enforcement authority at nonhazardous solid waste or municipal waste facilities or sites to a unit of local government.

"Enforcement ~~Grant~~ grant" means a ~~A~~ grant issued pursuant to Section 22.15(h) of the Act for inspection, investigation and enforcement activities at nonhazardous solid waste or municipal waste disposal sites. (Referred to as ~~SWE~~ "SMWE Grant" in 35 Ill. Adm. Code 870).

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"Generally ~~Accepted Accounting Principles~~ accepted accounting principles" ~~Means~~ means procedures outlined by the Financial Accounting Standards Board (High Ridge Park, ~~Stanford~~ Stamford, Connecticut, 06905, June 1, 1987).

"Grant Agreement" means ~~The~~ the written agreement and amendments thereto between the Agency and a grantee ~~(applicant)~~ in which the terms and conditions governing the grant are stated and agreed to by both parties.

"Grantee" means ~~The~~ the unit of local government ~~which~~ that has been awarded a grant for ~~solid~~ municipal waste ~~management~~ planning or nonhazardous solid or municipal waste enforcement under Section 22.15 of the Act ~~(Ill. Rev. 1989, ch. 111 1/2, par. 1022.15)~~.

"Phase I ~~SWP~~ MWP Grant" ~~A~~ means a ~~Solid~~ Municipal Waste Needs Assessment ~~grant~~ Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(b).

"Phase II ~~SWP~~ MWP Grant" ~~A~~ means a Municipal ~~Solid~~ Waste Planning ~~grant~~ Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(c).

"Phase III MWP Grant" means a Municipal Waste Implementation Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(d).

"Planning ~~Grant~~ grant" ~~A~~ means a grant issued pursuant to Section 22.15(g) of the Act for the planning of ~~nonhazardous solid~~ municipal waste management.

"State" means the State of Illinois.

"Subagreement" ~~A~~ means a written agreement between the grantee and another party, such as a contractor, and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personal and professional services and purchase orders.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART B: LIABILITIES AND REMEDIES FOR FAILURE TO COMPLY WITH GRANT CONDITIONS

Section 871.201 Noncompliance with Grant Conditions

a) In the event of noncompliance with any condition or obligation imposed pursuant to a grant made under Section 22.15 of the Act, the ~~Director~~ Agency may take one or more of the following actions:
   1) Commence legal action in a court of competent jurisdiction (e.g., to obtain an injunction or to recover in fraud);
   2) Annul the grant and recover all grant funds pursuant to the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. ~~1989~~ 1991 ch. 127, par. 2301 et seq.) [30 ILCS 705];
   3) Terminate the grant pursuant to Section 871.203 of this Part;
   4) Suspend all or part of the project work pursuant to Section 871.202 of this Part; or
   5) Take other actions such as reducing the amount of the grant by the amount of misused funds, or ~~disallow~~ disallowing costs in accordance with Section 871.601 of this Part.

b) No action shall be taken under this Part without prior consultation with the ~~applicant~~ grantee.

c) In determining whether to take action and which action to take when the Agency is empowered to act under this Part, the Agency shall consider factors such as the severity of the violation(s); the number of violations by the grantee; whether the violation is a continuing one; whether the grantee can remedy the violation; and whether the grantee and any subagreements remain capable of complying with the approved work project (see Subpart C of this Part).

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.202 Stop-Work Order

a) The Agency may, for any violation of this Part, by written order to the grantee, require the grantee to stop all or any part of the project work for a period of not more than 30 days after the date of the order, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop-work order issued pursuant to this ~~clause~~ Section. Any such order shall include a list of the project activities to which the stop-work order shall apply. Upon receipt of such an order, the grantee shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of not more than 30 days of the date of the stop-work order, or within any extension of that period to which the parties shall have agreed, the Agency shall either:
   1) Cancel the stop-work order upon the resolution of the violations leading to that stop-work order~~.~~; or
   2) Terminate the work covered by such order as provided in Section 871.203 of this Part.

b) If a stop-work order issued under this condition is canceled or the

period of the order or any extension there of expires, the grantee shall resume work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant instrument shall be amended accordingly, if:
   1) The stop-work order results either in an increase in the time required to complete the project ~~for~~, or an increase in the grantee's cost properly allocable to the performance of any part of the project; and
   2) The grantee asserts a written claim for such adjustment within 30 days after the end of the period of work stoppage. Such claim must be submitted prior to final payment under the grant.

c) Costs ~~which--are~~ incurred by the grantee after the receipt of a stop-work order, or within any extension of the stop-work order period to which the Agency and the grantee shall have agreed, shall be allowable costs only if so defined by Section 871.601 of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.203 Termination

a) Grant Termination by Agency
The Agency, by written notice and after consultation with the grantee, may terminate the grant, in whole or in part. Cause for termination shall include, but not be limited to: default by the grantee, failure by the grantee to comply with the terms and conditions of the grant, realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancements in the state of the art. ~~Upon--such--termination,--the--grantee--shall--refund--to--the--State--of--Illinois--Solid--Waste--Management--Fund--any--unexpended--grant--funds,--except--such--portion--thereof--as--may--be--required--by--the--grantee--to--make--payment--for--materials--and--equipment--furnished--or--services--rendered--under--an--enforceable--contract--prior--to--the--effective--date--of--the--termination--and--further--provided--that--such--costs--are--otherwise--allowable--under--the--conditions--of--this--grant.~~

b) Project Termination by Grantee
The grantee may not terminate a project for which the grant has been awarded, except for good cause. Good cause for termination shall include but not be limited to: realignment of programs, change in program requirements or priorities, lack of adequate funding, or advancements in the state of the art. If the Agency finds that there is good cause for the termination of all or any portion of a project for which the grant has been awarded, it shall enter into a termination agreement or unilaterally terminate the grant, effective with the date of termination of the project by the grantee. If the Agency finds that the grantee has terminated the project without good cause, then the grant shall be annulled and all grant funds previously paid or owing to the grantee shall be returned to the State of

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Illinois Solid Waste Management Fund as final settlement.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.205 Covenant Against Contingent Fees

The grantee warrants that no person or agency has been employed or retained to solicit or secure this grant upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the Agency shall have the right to annul this grant without liability or in its discretion to deduct from the grant award, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART C: REQUIREMENTS APPLICABLE TO SUBAGREEMENTS OF GRANTEE

Section 871.301 General Conditions for all Subagreements

a) Scope of Application
The following conditions shall apply to all subagreements entered into between the grantee and any other party and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which the grant is awarded, including contracts and subcontracts for personal and professional services.

b) Local preference
Local laws, ordinances, regulations or procedures which are designed to or operate to give local or in-state bidders or proposers preference over other bidders or proposers shall not be employed in evaluating bids or proposals for subagreements under a grant.

c) Competition
It is the policy of the Agency to encourage free and open competition appropriate to the type of project work to be performed.

d) Profits
Only fair and reasonable profits approved by the Agency may be earned by contractors in subagreements under Agency grants. Factors to be considered in determining a fair and reasonable profit shall include, but not be limited to, material acquisition, labor costs, associated management costs, contract risks, capital investments, degree of independent development, and cost control and record keeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor.

e) Travel
The grantee is responsible for ensuring that reimbursement for travel

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expenses accrued by contractors conducting grant eligible activities does not exceed the travel limits established by 80 Ill. Adm. Code 3000 (effective July 1, 1990), and rules promulgated thereunder. The Agency will not reimburse grantees for any contractors' travel expenses exceeding State travel limits for mileage, transportation, lodging, per diem, parking, tolls, and other eligible travel costs.

~~e~~f) Grantee responsibility
The grantee is responsible for the administration and successful accomplishment of the project for which the Agency grant is awarded. The grantee is responsible for the settlement and satisfaction of all contractual and administrative issues arising out of subagreements entered into under the grant. This includes, but is not limited to, issuance of invitations for bids or requests for proposals, selection ~~of~~ and oversight of contractors, award of contracts, protests of award, claims, disputes, and other procurement matters. These functions may be performed for the grantee by an individual or firm retained by the grantee for that purpose. Such an agent acts for the grantee and is subject to all the provisions of the grant agreement, including the requirements contained in this Part, ~~which~~ that apply to the grantee. Ultimate responsibility of the project will continue to remain with the grantee. Costs incurred by a unit of local government will be eligible for grant reimbursement only after the grant is executed.

~~f~~g) Privity of contract
Neither the Agency nor the State of Illinois shall be a party to any subagreement (including contracts) ~~or subcontracts~~, nor to any solicitation or request for proposals therefor.

~~g~~h) General requirements
Subagreements shall:
1) Be directly related to the accomplishment of the grantee's approved work program~~;~~;
2) Be in the form of a bilaterally executed written agreement ~~(except for small purchases of $10,000 or less)~~;
3) Be for monetary or in-kind consideration; and
4) Not be in the nature of a grant or gift.

~~h~~i) Documentation
1) Procurement records and files for contracts ~~in excess of $10,000~~ shall include the following:
A) Basis for contractor selection; and
B) Basis for award cost or price.
2) Procurement documentation as described in subsection (~~h~~i)(1) above shall be retained by the grantee or contractors of the grantee for the period of time required by Section 871.502.

~~i~~j) In-kind ~~work~~ Work
1) The grantee must secure prior written approval of the Agency for utilization of in-kind ~~work~~ contributions for work on ~~Planning Grants~~ planning grants in excess of $10.000 for Phase I activities and $25,000 for Phase II activities unless otherwise

stipulated in the Grant Agreement.

2) The Agency's approval of in-kind contributions shall be based on its determination that:

A) The ~~Grantee~~ grantee has trained manpower and supervisory personnel whose expertise and current responsibilities would enable them to accomplish the project work and to maintain records of such work in accordance with this Part~~.~~; and

B) The use of in-kind ~~work~~ contributions will effect savings in cost over those that would be incurred under technical/professional service contracting methods.

~~j~~k) The Agency retains the right to review, approve or disapprove in accordance with this Part all subagreements to be entered into by the grantee prior to execution of all such agreements. The Agency shall not approve the awarding of any subagreements to any person or organization which does not: ~~No subagreement shall be awarded to any person or organization which does not:~~

1) ~~Have adequate financial resources for performance, the necessary experience, organization, technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);~~ Have adequate resources, or the ability to obtain such resources prior to project initiation, to satisfactorily complete the project, including financial, organizational, and technical qualifications;

2) Have experience, or the ability to obtain such experience prior to the project's iniatiation in nonhazardous solid waste or municipal waste planning, data collection and interpretation, report preparation, and a proven record of meeting schedules and budgets;

~~2~~3) Have staffing sufficient to comply with the proposed or required completion schedule for the project;

~~3~~4) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts with ~~the~~ federal ~~and~~ or ~~state~~ State ~~governments~~ government;

~~4~~5) Have an adequate financial management system and audit procedure which complies with generally accepted accounting procedures and with American Institute of Certified Public Accountant's Professional Standards~~.~~ (666 Fifth Avenue, N.Y., N.Y. 10019, June 1, 1987)~~.~~ (This incorporation contains no later amendments or editions.)~~.~~;

~~5~~6) Maintain a standard of procurement in accordance with this Part;

~~6~~7) Maintain a property management system ~~which~~ that provides adequate procedures for the acquisition, maintenance, safeguarding, and disposition of all property; ~~and~~ or

~~7~~8) Conform to the civil rights, equal employment opportunity, and labor law requirements of the State of Illinois.

~~k~~l) Fraud and other unlawful or corrupt practices

1) The award and administration of grants by the State of Illinois, and of subagreements awarded by grantees under those grants, must be accomplished free from bribery, graft, kickbacks, and other corrupt practices. The grantee bears the primary responsibility for prevention and detection of such conduct and for cooperation with appropriate authorities in the prosecution of any such conduct.

2) The grantee ~~must~~ shall effectively pursue available ~~state~~ State or local legal and administrative remedies~~,~~ and shall take appropriate remedial action with respect to any allegations or evidence of such illegality or corrupt practices which are brought to its attention. The grantee shall advise the Agency immediately when any such allegation or evidence comes to its attention~~,~~ and shall periodically advise the Agency of the status and ultimate disposition of any such matter.

~~l~~m) Negotiation of subagreements

Negotiation of subagreements (i.e., award of subagreements by any method other than formal advertising) is authorized if it is impracticable and infeasible to use formal advertising. Negotiated contracts must be competitively awarded to the maximum practicable extent. Procurements may be negotiated by the ~~applicant~~ grantee if:

1) Public exigency as evidenced by governmental declaration will not permit the delay ~~incident to~~ in advertising (e.g., an emergency procurement);

2) The aggregate amount involved does not exceed $2,500;

3) The material or service to be procured is available from only one person or firm (and, if the procurement is expected to aggregate more than $10,000, the Agency has given prior approval in writing);

4) The procurement is for personal or professional services, or for any service to be rendered by a university or other educational institution; or

5) No responsive~~,~~ ~~responsible~~ bids at acceptable price levels have been received after formal advertising, and the Agency has given advance written approval of the negotiated contract. The Agency shall give such approval upon a showing by the grantee that no responsive~~,~~ ~~responsible~~ bids were received~~.~~.

~~m~~n) Small ~~purchase~~ Purchases

1) A small purchase is the procurement of materials, supplies, and services when the aggregate amount involved in any one transaction does not exceed $10,000~~.~~. The small purchase limitation of $10,000 applies to the aggregate total of an order, including all estimated ~~handling and freight charges~~, overhead, and profit to be paid under the order. In arriving at the aggregate amount involved in any one transaction, there must be included all items which should properly be grouped together. Reasonable competition shall be obtained and shall be evidenced by submission of price quotations.

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2) Subagreements for small purchases need not be in the form of a bilaterally executed written agreement. Where appropriate, unilateral purchase orders, sales slips, memoranda of oral price quotations, and the like may be utilized in the interest of minimizing paperwork. Retention in the purchase files of these documents and of written quotations received, or references to written catalogs or printed price lists used, will suffice as the record supporting the price paid.

~~n~~o) Agency Review of Subagreements

1) The Agency retains the right to review, ~~and~~ approve, or disapprove in accordance with this Part ~~any~~ all ~~subagreement~~ subagreements to be entered into by the grantee in furtherance of the administration of the grant prior to execution of that subagreement. The Agency shall approve a subagreement only if the grantee demonstrates that the subagreement is in conformance with subsection ~~i~~j(k) above.

2) If, at any time during the project, the Agency determines that the grantee's subcontractors are not successfully accomplishing project activities in accordance with the grant award, the Agency may take one or more actions presented in Section 871.201 of this Part. If the determination is due to the failure of the grantee's subcontractors to successfully accomplish the project work, the Agency shall notify the grantee in a timely manner of the determination and its recommendations for resolving the project deficiencies.

~~o~~p) Award of Subagreement

After review and approval by the Agency, ~~if required pursuant to subsection 871.302(h)~~, the grantee may award the contract. The Agency shall notify the grantee in writing of disapproved subagreements. Unsuccessful candidates shall be notified promptly.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.302 Contracts for Personal and Professional Services - Professional Consultant Agreements

a) Scope of Application

The provisions of subsections (a) through ~~(h)~~(i) of this Section apply to all subagreements of grantees for consulting services. ~~where the aggregate amount of services involved is expected to exceed $10,000. The provisions of subsections (c) and [illegible] not required, but may be allowed, where the population of the [illegible] 25,000 or less according to the most recent U.S. census.~~ When $10,000 or less of services (e.g., for consultant or consultant subcontract services) is required, the provisions of ~~subsection~~ Section 871.301~~(m)~~ (n) of this Part (Small Purchases) shall apply.

b) Type of Contract (Subagreement)

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1) General

Cost reimbursement, or fixed price ~~or per diem types of~~ contracts ~~or combinations thereof~~ may be negotiated for consulting services. A fixed price contract is generally used only when the scope and extent of work to be performed are clearly defined. In most other cases, a cost reimbursement type of contract is more appropriate. ~~A per diem contract may be used if no other type of contract is appropriate. An incentive fee may be utilized if the grantee submits an adequate independent cost estimate and price comparison pursuant to subsection (f).~~

2)~~4~~) Cost reimbursement contracts

Each cost reimbursement contract must clearly establish a cost ceiling that ~~which the consultant~~ may not be ~~exceed~~ exceeded without formally amending the contract and a fixed dollar profit which may not be increased except in case of a contract amendment ~~which~~ that increases the scope of the work.

3) Fixed price contracts

An acceptable fixed price contract is one ~~which~~ that establishes a guaranteed maximum price which may not be increased except to the extent that a contract amendment increases the scope of work.

~~2~~4) Contracts prohibited

The cost-plus-percentage-of-cost type of contract is prohibited.

~~5) Per diem contracts~~

~~A per diem agreement expected to exceed $10,000 may be utilized only after a determination that a fixed price or cost reimbursement type contract is not appropriate. Per diem agreements should be used only to a limited extent such as where the first task under the grant involves establishing the scope and cost of succeeding tasks, or for incidental services such as expert testimony or other intermittent or professional services. Cost and profit included in the per diem rate must be specifically negotiated and displayed separately in the consultant's proposal. The contract must clearly establish a price ceiling which may not be exceeded without formally amending the contract.~~

~~6~~5) Compensation procedures

If, under either a cost reimbursement or fixed price contract, the grantee desires to utilize a multiplier type of compensation, all of the following must apply:

A) The multiplier and the portions of the multiplier allocable to overhead and allocable to profit have been specifically negotiated;

B) The portion of the multiplier allocable to overhead includes only allowable items of cost under the cost principles contained in Section 871.601 of this Part; and

C) The portions of the multiplier allocable to profit and allocable to overhead have been separately identified in the contract; ~~and~~.

~~B) The fixed price contract includes a guaranteed maximum price for completion of the specifically defined scope of work; the cost reimbursement contract includes a fixed dollar profit which may not be increased except in a case of a contract amendment which increases the scope of work.~~

c) Evaluation and qualifications:

1) The grantee shall review and uniformly evaluate the qualifications of candidate firms.

2) ~~Qualification~~ Qualifications shall be evaluated by an objective process such as by the appointment of a board or committee, which, to the extent practicable, should include persons with technical skills.

3) Criteria ~~which~~ that shall be considered in the evaluation of candidates for submission of proposals include, but are not limited to:

A) Specialized experience and technical competence of the candidate or firm and its personnel (including a joint venture, association or professional subcontract) in connection with the type of services required and the complexity of the project;

B) Past record of performance on contracts with the grantee, other government agencies or public bodies, ~~and with~~ private industry, including such factors as control of costs, quality of work, and ability to meet schedules;

C) Capacity of the candidate to perform the work (including any specialized services) within the time limitations, taking into consideration the current and planned workload of the firm; and

D) Avoidance of personal and organizational conflicts of interest prohibited under State and local law.

d) Solicitation and Evaluation of Proposals:

1) Requests for professional services proposals must be in writing and must contain the information necessary to enable a protective offeror to prepare a proposal properly. The request for proposals must inform offerors of the evaluation criteria, including all those in subsection ~~(d)(2)~~ (c)(3) of this ~~section~~ Section, and of the relative importance attached to each criterion (a numerical weighted formula need not be utilized).

2) All proposals submitted in response to the request for professional services proposals must be uniformly evaluated. Evaluation criteria shall include ~~as~~ at a minimum, all criteria stated in subsection (c)(3) of this Section. The grantee shall also evaluate the candidate's proposed method to accomplish the work required, including, where appropriate, demonstrated capability to explore and develop innovative or advanced techniques and designs.

3) Proposals shall be evaluated by an objective process such as the appointment of a board or committee which, to the extent

practicable, includes persons with technical skills. Oral (including telephone) or written interviews shall be conducted with top rated proposers, and information derived therefrom shall be treated ~~on~~ as a confidential ~~basis~~, except as required to be disclosed pursuant to State or local law or to the Agency pursuant to subsection (f) below.

4) At no point during the entire procurement process shall information be conveyed to any candidate ~~which~~ that would specify bid deficiencies and corrective actions, indicate the contents of competing bids, or otherwise provide an unfair competitive advantage.

e) Negotiation

1) Grantees are responsible for ~~negotation~~ negotiation of their contracts for consulting services. Contract procurement including negotiation may be performed by the grantee directly or by another non-state governmental body, person or firm retained for the purpose.

2) Negotiation shall be conducted in accordance with State or local ~~procedure~~ procedures. If such procedures conflict with this Part, State ~~procedure~~ procedures shall have precedence over this Part. This Part shall have precedence over local procedure.

3) The object of negotiations with any candidate shall be to reach agreement on the provisions of the proposed contract. The grantee and the candidate shall discuss, ~~as~~ at a minimum:

A) The scope and extent or work;

B) Identification of the personnel and facilities to accomplish the work within the required time, including, where needed, employment of additional personnel, subcontracting, joint ventures, etc;

C) Availability ~~Provision~~ of the required technical services in accordance with regulations and criteria established for the project; and

D) A fair and reasonable price for the required work, to be determined in accordance with the cost and profit considerations set forth in subsections (f) and (g) below, and payment provisions.

f) Cost and Price Considerations:

1) General

It is the policy of the Agency that the cost or price of all subagreements and amendments there to must be considered. For each subagreement ~~in excess of $10,000~~, grantees shall use the procedures described in subsection (f)(2) below or equivalent process.

2) Cost Review

A) A review of proposed subagreement costs shall be made by the grantee.

B) ~~As~~At a minimum, proposed subagreement costs shall be presented ~~in summary format~~ on forms prescribed and provided

by the Agency and shall be supported by a certification executed by the selected ~~consultant~~ contractor that proposed costs reflect complete, current and accurate cost and pricing data applicable to the date of anticipated subagreement award.

C) In addition to the specific elements of cost, the estimated amount of profit shall be set forth separately in the cost summary for fixed price contracts and a maximum total dollar amount of profit shall be set forth separately in the cost summary for cost reimbursement contracts.

D) More detailed cost data than that required by the summary format may be required by the grantee or the Agency to substantiate the reasonableness of proposed subagreement costs. Such detailed documentation is required by the Agency only when the selected ~~consultant~~ contractor is unable to certify that the cost and pricing data used are complete, current and accurate or when evidence of fraud or misconduct has arisen. The Agency may, on a selected basis, perform a preaward cost analysis on any subagreement. Circumstances under which such an analysis would be conducted include amendments to subagreements or evidence of cost inflation to meet costs. A provisional overhead rate will be agreed upon prior to contract award.

E) The ~~consultant's~~ contractor's actual costs, direct and indirect, allowable for State participation shall be determined in accordance with the terms and conditions of the subagreement and this Part.

F) The ~~consultant~~ contractor shall have an accounting system that ~~which~~ accounts for costs in accordance with generally accepted accounting principles. This system shall provide for the identification, accumulation and segregation of allowable and unallowable project costs among projects. The ~~consultant~~ contractor must propose and account for costs in a manner consistent with ~~his~~ normal accounting procedures.

G) Subagreements awarded on the basis of review of a cost element summary and a certification of complete, current and accurate cost, and pricing data shall be subject to downward renegotiation or recoupment of funds where the Agency determines that such certification was not based on complete, current and accurate cost and pricing data or not based on costs allowable under the appropriate Agency cost principles at the time of awa

g) Profit

The objective of negotiations shall be the determination of a fair and reasonable profit as ~~defined~~ described in Section 871.30(d) of this Part. For the purpose of subagreements under State grants, profit is defined as the net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. Profit on a subagreement and

each amendment to a subagreement under a grant should be sufficient to attract ~~consultants~~ contractors who possess talents and skills necessary to ~~the~~ accomplishment ~~of~~ project objectives, and to stimulate efficient and expeditious completion of the project. Where cost review is performed, the estimate of profit shall be reviewed by the grantee and the Agency as ~~are~~ will all other elements of price.

h) Required Subagreement Provisions~~:~~

1) Content of subagreement

A) Each subagreement must define, at a minimum:

i) The scope and extent of project work;

ii) The time for performance and completion of the contract work, including where appropriate, dates for completion of significant project tasks;

iii) Personnel and facilities necessary to accomplish the work within the required time; and

iv) The extent of subcontracting and ~~consultant~~ contractor agreements~~;~~, including all costs to be incurred under each subagreement.

B) If any of these elements cannot be defined for later tasks or steps at the time of contract execution, the subsequent tasks or steps shall be included in the contract at a time specified in the contract.

2) Required subagreement provisions

Each consulting services contract must include the provisions set forth in Appendix A of this Part, and shall state that Appendix A provisions will supersede all others.

i) Subcontracts under subagreements for consulting services~~:~~

1) The award or execution of subcontracts under a prime contract for consulting services awarded to a ~~consultant~~ contractor by a grantee, and the procurement and negotiation procedures used by the ~~consultant~~ contractor in awarding such subcontracts, are ~~not~~ required to comply with ~~any--of-the~~ all provisions, selection procedures, policies ~~or~~ and principles set forth in Section 871.301 ~~or~~ and Section 871.302 of this Part. ~~except-those specifically-stated-in-subsection-(1)(2);~~

2) The award or execution of subcontracts in excess of $10,000 under a prime contract for consulting services and the procurement procedures used by the ~~consultant~~ contractor in awarding such subcontracts must comply with the following:

A) ~~subsection~~ Section 871.301(b) of this Part, (Local Preference)~~;~~;

B) ~~subsection~~ Section 871.302(f) of this Part, (Cost and Price Considerations)~~;~~; and

C) ~~subsection~~ Section 871.302(g) of this Part, (Profit).

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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Section 871.303 Compliance With Procurement Requirements

a) Grantee responsibility
The grantee is responsible for selecting the low, responsive~~,~~ ~~and responsible~~ bidder or other contractor in accordance with applicable requirements of ~~state~~ State, or local laws or ordinances, as well as the specific requirements of ~~state~~ State and federal law or this grant agreement directly affecting the procurement (for example, the non-restrictive specification requirement or the equal employment opportunity requirement) and for the initial resolution of complaints based upon alleged violations. If complaint is made to the Agency concerning an alleged violation of any law or of this grant agreement in the procurement of services or materials for a project, the complaint will be referred to the grantee for resolution. The grantee shall promptly determine each such complaint upon its merits permitting the complaining party as well as any other interested party who may be adversely affected, including bidders on the contract in question, to state in writing or at a conference the basis for ~~his~~ views concerning the proposed procurement. The grantee must promptly furnish to the complaining party and to other affected parties who participated in the conference or submitted written comments, by certified mail, a written summary of its determination, substantiated by an engineering and legal opinion, providing a justification for its determination.

b) Arbitration
Disputes between the grantee and any party adversely affected by the determination of the grantee made pursuant to subsection (a) above shall be resolved by binding arbitration by a single arbitrator, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association~~,~~ (140 W. 51st Street, N.Y., N.Y., 10020~~,~~ 1986) (This incorporation contains no further amendments or editions.) This agreement to arbitrate shall be specifically enforceable under the Uniform Arbitration Act (Ill. Rev. Stat. ~~1989~~ 1991 ch. 10, par. 101 et seq.) [710 ILCS 5]. The award rendered by the arbitrator shall be final, and judgement may be entered upon it in any court having jurisdiction thereof. A copy of the arbitration award shall be provided to the Agency immediately upon its issuance.

c) Time limitations
Complaints pursuant to subsection (a) above shall be made as early as possible during the procurement process, preferably prior to issuance of an invitation for bids to avoid disruption of the procurement process~~,~~ ~~Provided, That~~ provided that a complaint authorized by subsection (a) above must be mailed by certified mail (return receipt requested), or delivered, no later than five working days after the bid opening. A request for arbitration pursuant to subsection (b) above must be made to the American Arbitration Association within one week after the complaining party received the grantee's adverse determination.

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d) Deferral of procurement action
Where the grantee has received a written complaint pursuant to subsection (a) above, it must defer issuance of its solicitation or award or notice to proceed under the contract (as appropriate) for ten days after mailing or delivery of any written adverse determination. If a determination is made by either the grantee or the arbitrator which is favorable to the complainant, the terms of the solicitation must be revised or the contract must be awarded (as appropriate) in accordance with such determination.

e) Enforcement
Noncompliance with the provisions of this grant affecting procurement will result in:
1) Total or partial termination of the grant pursuant to Section 871.203; ~~or~~
2) Ineligibility for grant assistance which could otherwise be awarded under this grant; or
3) Disallowance of project costs incurred in violation of the provisions of this grant offer or applicable laws, as determined by the Agency.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.304 Disputes

a) Only the grantee may appeal to the Agency under this provision with respect to its subagreements thereunder ~~for~~ in its own name and for its own benefit. Neither a contractor nor a subcontractor of a grantee may prosecute an appeal under the disputes provision of a grant in its own name or interest.

b) Any dispute arising under this grant which is not disposed of by agreement shall be decided by the ~~Director or his duly authorized representative, who shall reduce his decision to writing and mail~~ Agency. A written decision shall be mailed or otherwise ~~furnish~~ furnished ~~a copy thereof~~ to the ~~appicant~~ grantee. The decision of the ~~Director~~ Agency shall be final and conclusive.

c) This "disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in subsection (b) above.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.305 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the

execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for any such loss, damage, injury or death whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise consistent with the provisions of ~~"AN ACT in relation to indemnity in certain contracts"~~ Construction Contract Indemnification for Negligence Act (Ill. Rev. Stat. ~~1989~~ 1991, ch. 29, par. 61 et seq.) [740 ILCS 35]. The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of such contract or satisfaction of any and all claims arising thereunder.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.402 Project Changes

a) Prior approval by the Agency is required for project changes ~~which~~ that may:
   ~~1)~~ ~~Increase the amount of State funds needed to complete the project, except that no change will be approved which either exceeds the grant offered or which exceeds the limitation provided for approvable contingencies; or~~
   1~~2~~) Alter the scope of the project by changing the methodologies or personnel to be used, as agreed to at the time of the grant award; ~~or~~
   2~~3~~) Extend any contractual or grant completion date for the project~~;~~ subject to the provisions required by Section 870.207(e); or
   3) Re-allocate budget amounts be category through line-item revisions, provided that the total grant amount does not change.

b) The grantee shall notify the Agency of project chances pursuant to subsection (a) above in writing ~~three weeks~~ 30 days prior to the effective date of all proposed project changes. Failure on the part of the grantee to give timely notice of proposed project changes pursuant to subsection (a) above of this Part ~~or disapproval of a proposed project change by the Agency~~ may, in accordance with Section 871.201 of this Part, result in:
   1) Disallowance of costs incurred ~~which~~ that are attributable to the change; or
   2) Termination of the grant.

c) The Agency ~~may~~ shall disapprove proposed project changes by written notice to the grantee within ~~3 weeks~~ 30 days after receipt of a written notice from the grantee of a proposed change~~;~~ pursuant to subsection (a) of this Part. If the Agency fails to notify the grantee within 30 days of receipt of project changes pursuant to subsection (a) of this Part, these changes shall be deemed to be approved. ~~however, neither~~ Neither approval nor failure to disapprove a project change shall commit or obligate the State of Illinois or the

Agency to any increase in the amount of the grant or payments thereunder and nothing herein shall operate to increase the amount of the grant.

d) ~~Notwithstanding the provisions of subsections (a) (c), prior Agency approval is not required for changes having a cost of less than $500.00.~~ The total cost for all changes allowable under this provision shall not exceed one-half of one percent of the total grant offer.

e~~d~~) In addition to the notification of project changes pursuant to subsections (a)-(c), a copy of any prime contract or modification thereof and of revisions to ~~plans and~~ specifications must be submitted to the Agency for approval within one week of execution; however, neither approval nor ~~failure to approve~~ disapproval of any prime contract or modification thereof or revisions to ~~plans and~~ specifications shall commit or obligate the State of Illinois or the Agency to any increase in the amount of the grant or payments thereunder.

f~~e~~) The Agency will approve project changes if the grantee can make a showing that:
   ~~1)~~ ~~The original project cost approval was based on estimated costs or contractor bids where the actual costs or contractor bids were different;~~
   1)~~2)~~ Amendments to ~~state~~ State statutes affect the project cost;
   2)~~3)~~ A project element was inadvertently omitted; or
   3)~~4)~~ An approved project element was found to be unnecessary.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.403 Termination of Deligation Agreement

Any obligation of the State of Illinois and the Agency to make any payment of funds pursuant to a Nonhazardous Solid Waste or Municipal Waste Enforcement Grant shall terminate ~~absolutely~~ upon the termination of the delegation agreement under which the grantee is authorized to perform the activities subsidized by the grant.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART E: REQUIREMENTS APPLICABLE TO ACCESS, AUDITING, AND RECORDS

Section 871.501 Access

a) The Agency and any persons designated by the Agency shall have access to the premises where any portion of the work for which the grant was awarded is being performed during normal business hours and any other

time at which the work is being performed. Subsequent to cessation of grant support, Agency personnel or any authorized representative shall have access to the project records as defined in Section 871.502 of this Part, to the full extent of the grantee's right to access, during normal business hours.

b) Any contract entered into by the grantee for work, and any subagreement thereunder, shall provide that the representatives of the Agency will have access to the work as described in subsection (a) above and that the contractor or subcontractor will provide proper facilities for such access and inspection. Such contract or subagreement must also provide that the Agency or any authorized representative shall have access to any books, documents, papers, and records of the contractor or subcontractor ~~which~~ that which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

c) Any failure by the grantee or any contractor or subcontractor of the grantee to provide access, as provided herein, after 10 days' written notice from the Agency, shall be cause for termination of the grant pursuant to Section 871.203 of this Part~~, and refund to the State of Illinois Solid Waste Management Fund of any unexpended grant funds in the hands of the grantee, and in addition thereto,~~ refund to the State of Illinois Solid Waste Management Fund of any grant subcontractor found in noncompliance with this Section.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.502 Audit and Records

a) The grantee shall maintain books, records, documents, reports, and other evidentiary material and accounting procedures and practices that conform to generally accepted accounting principles to properly account for:
   1) The receipt and disposition by the grantee of all assistance received for the project, including both State assistance and any matching share or cost sharing; and
   2) The costs ~~charged to~~ of the project, including all direct and indirect costs of whatever nature incurred for the performance of the project for which the grant has been awarded. The foregoing constitute "records" for the purposes of this condition.

b) The grantee's facilities, or such facilities as may be engaged in the performance of the project for which the grant has been awarded, and the grantee's records shall be subject to inspection and audit by the Agency or any authorized representative at the times specified in Section 871.501 of this Part.

c) The grantee shall preserve and make his records available to the Agency or any authorized representative:
   1) Until expiration of 3 years from the date of final payment under this grant~~,~~; and
   2) For such longer period, if any, as is required by applicable statute or lawful requirement, or by ~~Subsections~~ subsections (d) or (e) below.

d) If this grant is terminated completely or partially, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final termination settlement.

e) Records ~~which~~ that relate to appeals under Section 871.304 of this Part, litigation, ~~or~~ the settlement of claims arising out of the performance of the project for which this grant was awarded, or costs and expenses of the project as to which exception has been taken by the Agency or any of its duly authorized representatives~~,~~ shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

f) Any failure by the grantee or any contractor or subcontractor of the grantee to make records available to the Agency as required by this Section ~~871.502~~ after 10 days' written notice from the Agency, shall be cause for termination of the grant pursuant to Section 871.203 ~~hereof~~ of this Part, ~~and refund to the State of Illinois Solid Waste Management Fund of any unexpended grant funds in the hands of the grantee, and in addition thereto, refund~~ to the State of Illinois Solid Waste Management Fund of any grant funds previously expended by the grantee, contractor or subcontractor found in noncompliance with this Section.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.503 Reports

The grantee shall prepare and file with the Agency a final report containing the information required by 35 Ill. Adm. Code 870.207 and all financial requests required by Section ~~870.604~~ 807.209. Failure to timely submit reports required by this grant offer may result in:

a) Withholding of grant funds;
b) Suspension of the grant pursuant to Section 871.202;
c) Termination of the grant pursuant to Section 871.203; or
d) Such other action as the Agency may be authorized to take.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART F: REQUIREMENTS APPLICABLE TO PAYMENT OF GRANTS

Section 871.601 Determination of Allowable Costs

~~a) The grantee will be paid, upon request, in accordance with Section~~

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~~871.604,--for--the-state-share-of-all-necessary-costs-within-the-scope of-the-approved-project-not--to--exceed--the--total--grant--offer--and determined-to-be-allowable-in-accordance-with-the-following-criteria:~~

~~b)~~ ~~Allowable-project-costs.~~

~~Allocable--project--costs--of--the--grantee--which--are-reasonable-and necessary-are-allowable.--Necessary-costs-may--include,--but--are- not limited-to:~~

a) The grantee will be paid, upon request, for the State share of all necessary costs within the scope of the approved project not to exceed the total grant offer and determined to be allowable in accordance with the criteria listed below. Allocable project costs of the grantee which are reasonable and necessary are allowable. Necessary costs may include, but are not limited to:

1) Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in subsection ~~c)~~(b)(7) below~~:~~;
2) Professional and consultant services;
3) Project feasibility and engineering reports; and
4) Materials acquired, consumed, or expended specifically for the project.

~~c)~~b) Unallowable ~~costs~~ Costs

Costs which exceed the total amount of the grant offer or which are not necessary for completion of the work required by the Grant Agreement are unallowable. Such costs include, but are not limited to:

1) Area wide planning or enforcement not directly related to the project;
2) Bonus payments not legally required for completion of the project;
3) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;
4) Fines and penalties resulting from violations of, or failure to comply with, federal, ~~state~~ State, or local laws;
5) Costs outside the scope of the approved planning or enforcement project;
6) Interest on bonds or any other form of indebtedness required to finance the project costs;
7) Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in subsection (d) below;
8) Site acquisition (for example, sanitary landfills and sludge disposal areas);
9) Costs for which payment has been or will be received under another ~~state~~ State or federal assistance program;
10) Costs of equipment or material procured in violation of any provisions of these General Conditions;
11) Costs of special funds (i.e., industry advancement funds, funds

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to reimburse bidding costs to unsuccessful offerors, etc.) financed by contractors, contributions in the industry for methods and materials research, public and industry relations, market development, labor-management matters, wage negotiations, jurisdictional disputes, defraying of all or part of unsuccessful offerors bidding costs, or similar purposes;

12) Costs under contracts ~~which-costs~~ that are incurred after the expiration of the applicable contractual completion date, even if the contractual completion date is subsequently extended by the grantee, unless such extension has been approved by the Agency in accordance with Section 871.402;
13) Personal and professional consultant services costs arising under a cost-plus-percentage of cost type of agreement (including the multiplier contract where profit is included in the multiplier);
14) Personal and professional consultant services costs when the Agency has been refused access to the books and records of the contractor or the contractor has refused to renegotiate a personal or professional services contract in accordance with the provisions of Section 871.302; and
15) Increases in personal and professional consultant services contract fees which are based solely on a percentage of an increased construction cost notwithstanding the contractual liabilities of the grantee under such contract.

~~d)~~c) Indirect ~~costs~~ Costs

Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement negotiated and incorporated in the grant agreement. An indirect cost agreement must identify those costs elements allowable pursuant to subsection (a) above. Where the benefits derived from an applicant's indirect services cannot be readily determined, a lump sum for overhead may be negotiated based upon a determination that such amount will be approximately the same as the actual indirect costs that may be incurred. Procedures for development of an indirect cost agreement are included as Appendix B to this Part.

~~e)~~d) Disputes ~~concerning-allowable-costs~~ Concerning Allowable Costs

The grantee shall seek to resolve any questions relating to cost allowability or allocation at its earliest opportunity (if possible, prior to execution of the grant agreement). Final determinations by the Agency concerning the allowability of costs shall be conclusive unless appealed within 30 days in accordance with Section 871.304.

~~f)~~e) Limitation ~~upon-project--costs--incurred--prior~~ Upon Project Costs Incurred Prior to ~~grant-award~~ Grant Award

Payment will not be authorized for costs incurred prior to the date of the grant award.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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Section 871.602 Amount of Grant-Percentage of Approved Allowable Costs

a) The commitment and obligation of the State of Illinois and the Agency to the grantee by this grant for the project is limited to and shall not exceed the total amount of the grant. Nothing herein, including the provisions of Section 871.402 of this Part, shall operate to commit or obligate the State of Illinois or the Agency to any increase in the total amount or percentage of the grant or of the grant offer.

b) The amount of the grant shall not exceed the ~~state~~ State share of the approved allowable cost of the project as set forth in the grant offer and special conditions thereof. In the event the actual allowable cost of the project, as determined by the Agency pursuant to periodic audit, is less than the estimated allowable cost, such actual eligible cost shall be used to determine the amount of the grant and the grant shall be reduced as necessary to conform with the limitations ~~hereinabove described~~ above.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.603 Use of Grant and Payment of ~~Non-Allowable~~ Unallowable Costs

a) The grant shall be expended solely for approved allowable costs incurred in the ~~solid~~ municipal waste planning or nonhazardous solid waste or municipal waste enforcement activities authorized by the terms of the grant.

b) The grantee agrees to pay the ~~non-allowable~~ unallowable costs associated with the project and all allowable costs of the project which exceed the amount of the grant offer.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 871.604 Grant Payment Schedule (Repealed)

~~a) Requests for partial or final payment shall be sent to the Agency and shall demonstrate the performance of work in accordance with the terms of the grant agreement. Requests shall be submitted monthly for payment under Planning Grants unless the payment schedule in the grant provides otherwise. Requests shall be submitted quarterly for payment under Enforcement Grants unless the grant provides otherwise.~~

~~b) The grantee shall be paid the state share of allowable costs incurred within the scope of an approved project not to exceed the total grant, subject to the limitations of the conditions of the grant. Such payments must be in accordance with the payment schedule and the grant amount set forth in the grant award notification or any amendments thereto. Where the Agency has issued a Planning Grant which includes both Phase I SWP Grant items and Phase II SWP Grant items, the Agency will not make payment for Phase II work items until Phase I work items have been completed in accordance with the terms of the grant.~~

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~~1) Requests for payment~~

~~The grantee may submit requests for payments for allowable costs incurred in accordance with the payment schedule. Upon receipt of a request for payment, subject to the limitations set forth in the conditions of the grant, the Agency shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of state payments to the grantee for the project is equal to the state share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment.~~

~~2) Adjustment~~

~~At any time or times prior to final payment under the grant, the Agency may cause any request(s) for payment to be reviewed or audited. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit not to constitute allowable costs. Any payment will be reduced for overpayments or increased for underpayments on preceding requests for payment.~~

~~3) Refunds, rebates, credits, etc.~~

~~The state share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee has been paid under a grant, must be paid to the State of Illinois Solid Waste Management Fund. Reasonable expenses incurred by the grantee for the purposes of securing such refunds, rebates, credits, or other amounts shall be allowable under the grant.~~

~~4) Final payment~~

~~The Agency will retain ten percent of all documented costs incurred pursuant to a Planning Grant and will not issue payment for the retained amount until compliance with all applicable requirements of the grant has been demonstrated by the grantee. Upon compliance by the grantee with all applicable requirements of the grant, the Agency shall cause to be disbursed to the grantee any balance of approved allowable project cost which has not been paid to the grantee. Prior to final payment under the grant, the grantee must execute and deliver an assignment to the Agency, in form and substance satisfactory to the Agency, of the state share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the State under the grant, and a release discharging the State, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant, subject only to such exceptions which may be specified in the release.~~

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~~5) Schedule of payments~~
~~Payments for project work will be paid in accordance with the schedule of payments established by a condition of this grant, subject to appropriation of funds by the Illinois General Assembly.~~

(Source: Repealed at 19 Ill. Reg. _____, effective _____)

Section 871.605 Other Federal or State Grants

If the grantee ~~shall become~~ becomes eligible for a grant of federal funds or ~~state~~ State funds for this project from other than the Solid Waste Management Fund, the grantee shall repay to the State of Illinois, for deposit in the Solid Waste Management Fund, any funds received under this offer if the total federal or ~~state~~ State funds received exceed 70 percent of the approved allowable cost under a ~~Planning Grant, or 50 percent of the approved allowable cost under an~~ planning grant or ~~Enforcement Project~~ enforcement grant, as defined by the Agency in accordance with the conditions of this grant. The grantee shall take any and all actions as may be directed by the Agency to perfect and preserve such eligibility and to obtain such grant of federal funds or ~~state~~ State funds from other than the Solid Waste Management Fund or to reimburse to the Solid Waste Management Fund such amounts as might have been returned to it under this condition but for failure of the grantee to take timely action as directed.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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Section 871.APPENDIX A Required Provisions -- Professional ~~Consultant~~ Contractor Agreements

1. General
   ~~(~~a) The grantee and the ~~consultant~~ contractor agree that the following provisions shall apply to the work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.
   ~~(~~b) This agreement is funded in part by a grant from the Illinois Environmental Protection Agency (Agency). Neither the State of Illinois nor the ~~Illinois Environmental Protection~~ Agency ~~(hereinafter Agency)~~ is a party to this agreement.
2. Responsibility of the ~~Consultant~~ Contractor
   ~~(~~a) The ~~consultant~~ contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by the ~~consultant~~ contractor under this agreement. The ~~consultant~~ contractor shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, reports and other services.
   ~~(~~b) The ~~consultant~~ contractor shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and 35 Ill. Adm. Code 871.
   ~~(~~c) Approval by the grantee or Agency of drawings, designs, specifications, reports, and incidental consulting work or materials furnished hereunder shall not in any way relieve the ~~consultant~~ contractor of responsibility for the technical adequacy of the work. Neither the grantee's nor Agency's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement, and the ~~consultant~~ contractor shall be and remain liable in accordance with applicable law for all damages to the grantee or Agency caused by the ~~consultants~~ contractor's negligent performance of any of the services furnished under this agreement.
   ~~(~~d) The rights and remedies of the grantee provided for under this agreement are in addition to any other rights and remedies provided by law.
3. Scope of work~~:~~
   Except as may be otherwise specifically limited in this agreement, the services to be rendered by the ~~consultant~~ contractor shall include all services required to complete the task or step in accordance with 35 Ill. Adm. Code 871.
4. Changes~~:~~
   ~~(~~a) The grantee may, at any time, by written order, make changes

within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the ~~consultant's~~ contractor's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the ~~consultant~~ contractor for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the ~~consultant~~ contractor of the notification of change unless the grantee grants a further period of time before the date of final payment under this agreement.

~~(~~b) ~~No--services--for--which--an~~ If additional compensation will be charged by the ~~consultant~~ contractor for its services, ~~shall--be furnished--without--the~~ prior written authorization ~~of~~ must be obtained from the grantee.

5. Termination~~:~~

~~(~~a) This agreement may be terminated in whole or in part in writing by either party in the event of ~~substantial~~ failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party~~;~~ ~~Provided~~ provided, ~~That~~ that no such termination may be effected unless the other party is given (1) not less than ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination.

~~(b) This--agreement--may-be-terminated-in-whole-or-in-part-in-writing by-the-grantee--for--its--convenience:--Provided,--That--no--such termination--may--be--effected-unless-the-consultant-is-given-(1) not--less--than--ten--(10)--days--written--notice--(delivered--by certified-mail,-return-receipt-requested)-of-intent-to--terminate and--(2)--an--opportunity--for--consultation-with-the-terminating party-prior-to-termination.~~

~~(c~~b) If termination for default is effected by the grantee, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work~~;~~ and (2) any payment due to the ~~consultant~~ contractor at the time of termination ~~may~~ shall be adjusted to ~~the extent--of~~ reflect any additional costs occasioned to the grantee by reason of the ~~consultant's~~ contractor's default. If termination for default is effected by the ~~consultant~~ contractor, or if termination for convenience is effected by the grantee, the equitable adjustment shall include a reasonable profit, as defined in Section 871.301(d) or this Part, for services or other work performed. The equitable adjustment for any termination shall provide for payment to the ~~consultant~~ contractor for services rendered and expenses incurred prior to the termination, in addition to

termination settlement costs reasonably incurred by the ~~consultant~~ contractor relating to commitments which are contractually obligated prior to the termination.

~~(d~~c) Upon receipt of the termination action pursuant to paragraphs (a) or (b) above, the ~~consultant~~ contractor shall (1) promptly discontinue all services affected (unless the notice directs otherwise)~~;~~ and (2) deliver or otherwise make available to the grantee all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the ~~consultant~~ contractor in performing this agreement, whether completed or in process.

~~(e~~d) Upon termination pursuant to paragraphs (a) or (b) above, the grantee may take over the work and prosecute the same to completion by agreement with another party or otherwise.

~~(f~~e) If, after termination for failure of the ~~consultant~~ contractor to fulfill contractual obligations, it is determined that the ~~consultant~~ contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the grantee. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph ~~(c)~~ (b) of this clause.

~~(g~~f) The rights and remedies of the grantee and the ~~consultant~~ contractor provided in this clause are in addition to any other rights and remedies provided by law or under this agreement.

6. Remedies~~:~~

~~(~~a) Except as may be otherwise provided in this agreement, or as the parties hereto may otherwise agree, all claims, counterclaims, disputes and other matters in question between the grantee and the ~~consultant~~ contractor arising out of or relating to this agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ~~then-obtaining~~, subject to the limitations stated in paragraphs (c) and (d) below. This agreement, and any other agreement or consent to arbitrate entered into in accordance therewith as provided below, will be specifically enforceable under the prevailing law of any court having jurisdiction.

~~(~~b) Notice of demand for arbitration must be filed in writing with the other party to this Agreement, with the Agency, and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

~~(~~c) All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement that

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the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than $200,000 (exclusive of interest and costs). The arbitrators will not have jurisdiction, power or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy thereof is more than $200,000 (exclusive of interest and costs) or to render a monetary award in response thereto against any party which totals more than $200,000 (exclusive of interest and costs).

~~(~~d) No arbitration arising out of, or relating to, this agreement may include, by consolidation, joinder or in any other manner, any additional party not a party to this agreement.

~~(~~e) By written consent signed by all the parties to this agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs (c) and (d) above may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds $200,000 (exclusive of interest and costs) or which is with any party not specifically described therein.

~~(~~f) The award rendered by the arbitrators will be final, not subject to appeal, and judgment may be entered upon it in any court having jurisdiction thereof.

7. Payment

~~(~~a) The ~~consultant~~ contractor ~~may~~ shall submit payment requests to the grantee in accordance with the schedule in the project scope of work. Such requests shall be based upon the value of the work and services performed by the ~~consultant~~ contractor under this agreement, and shall be prepared by the ~~consultant~~ contractor and supplemented or accompanied by such supporting data as may be required by the grantee or the Agency. The contractor shall also submit progress reports to the grantee on forms prescribed and provided by the Agency in accordance with the schedule in the project Scope of Work. These reports shall document work completed and costs incurred during the reporting period and to date.

~~(~~b) Upon approval of such payment request by the grantee, payment shall be made to the ~~consultant~~ contractor as soon as practicable of ninety percent of the amount as determined above~~;~~. ~~Provided, however, that if the grantee determines that the work under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the grantee, he may at his discretion release to the consultant such excess amount.~~

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~~(~~c) Upon satisfactory completion by the ~~consultant~~ contractor of the work called for under the terms of this agreement, and upon acceptance of such work by the grantee, the ~~consultant~~ contractor will be paid the unpaid balance of any money due for such work, including the retained percentages relating to this portion of the work.

~~(~~d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior to settlement upon termination of the agreement, and as a condition precedent thereto, the ~~consultant~~ contractor shall execute and deliver to the grantee a release of all claims against the grantee arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the ~~consultant~~ contractor from the operation of the release in stated amounts to be set forth therein.

8. Audit~~;~~ and ~~access~~ Access to ~~records;~~ Records

~~(~~a) The ~~consultant~~ contractor shall maintain books, records, documents and other evidence directly pertinent to performance on Agency grant work under this agreement in accordance with generally accepted accounting principles and in accordance with Sections 871.501 and 871.502. The ~~consultant~~ contractor shall also maintain the financial information and data used by the ~~consultant~~ contractor in the preparation or support of the cost submission required pursuant to this Part for subagreements over $100,000 and a copy of the grant cost summary submitted to the grantee. The Agency or any of its duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The ~~consultant~~ contractor will provide proper facilities for such access and inspection.

~~(~~b) The ~~consultant~~ contractor agrees to include paragraphs (a) through (e) of this clause in all ~~his~~ contracts and all tier subcontracts directly related to project performance which are in excess of $10,000.

~~(~~c) Audits conducted pursuant to this provision shall be in accordance with the American Institute of Certified Public Accountants' Professional Standards.

~~(~~d) The ~~consultant~~ contractor agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to the Agency ~~any of the agencies referred to in paragraph (a) above~~. Where the audit concerns the ~~consultant~~ contractor, the auditing agency will afford the ~~consultant~~ contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

~~(~~e) Records under paragraphs (a) and (b) above shall be maintained and made available during performance on Agency grant work under this agreement and until three years from date of final Agency grant payment for the project. In addition, those records ~~which~~ that relate to any "dispute" appeal under an Agency grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

9. Price ~~reduction~~ Reduction for ~~defective cost~~ Defective Cost or ~~pricing data~~ Pricing Data~~:~~ for Agreements Exceeding $100,000 ~~(The provisions of this clause are required by the Agency only if the amount of this agreement exceeds $100,000. The grantee may elect to utilize this clause if the contract amount is $100,000 or less.)~~

~~(~~a) If the Agency determines that any price, including profit negotiated in connection with this agreement or any cost reimbursable under this agreement was increased because the ~~consultant or any subcontractor~~ contractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data, then such price, ~~or~~ cost, or profit shall be reduced accordingly, and the agreement shall be modified in writing to reflect such reduction.

~~(~~b) Failure to agree on a reduction shall be subject to the "Remedies" clause of ~~this agreement~~ 35 Ill. Adm. Code 871.Appendix A(6) of this Part.

(Note: Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the ~~consultant~~ contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the ~~consultant~~ contractor. It is also expected that any ~~subcontractor~~ contractor subject to such indemnification will generally require substantially similar identification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

10. Subcontractors

~~(~~a) Any subcontractors and outside associates or consultants ~~required~~ hired by the ~~consultant~~ contractor in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically approved by the grantee during the performance of this agreement. Any substitution ~~in such~~ of subcontractors, associates, or consultants will be subject to the prior written approval of the Agency and the grantee.

~~(~~b) Except as otherwise provided in this agreement, the ~~consultant~~ contractor may not subcontract services in excess of thirty percent (30%) of the contract price to subcontractors or consultants without prior written approval of the grantee.

11. Equal Employment Opportunity ~~employment opportunity~~~:~~
Employment Opportunity The ~~consultant~~ contractor agrees to ~~that he will~~ not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

12. Covenant ~~against contingent fees~~ Against Contingent Fees~~:~~
The ~~consultant~~ contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, ~~excepting~~ except bona fide employees. For breach or violation of this warranty the grantee shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission percentage or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. Gratuities

~~(~~a) The grantee may, by written notice to the ~~consultant~~ contractor, terminate the right of the ~~consultant~~ contractor to proceed under this agreement if it is found, after notice and hearing, by the grantee that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the ~~consultant~~ contractor, or any agent or representative of the ~~consultant~~ contractor, to any official or employee of the grantee or of the Agency with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this agreement~~:~~, ~~Provided~~ provided, ~~That~~ that the existence of the facts upon which the grantee makes such findings shall be in issue and may be reviewed in proceedings pursuant to Clause 6 (Remedies) of this agreement.

~~(~~b) In the event this agreement is terminated as provided in paragraph (a) hereof, the grantee shall be entitled (1) to pursue the same remedies against the ~~consultant~~ contractor as it could pursue in the event of a breach of the contract by the ~~consultant~~ contractor~~;~~ and (2) as a penalty in addition to any other damages to which it may be entitled by law to exemplary damages in an amount (as determined by the grantee) which shall be not less than three nor more than ten times the costs incurred by the ~~consultant~~ contractor in providing any such gratuities to any such officer or employee.

~~(~~c) The rights and remedies of the grantee provided in this clause shall not be exclusive and are in addition to any rights and remedies provided by law or under this agreement.

14. Conflict of Interest
Contractor, by signing this agreement, covenants that contractor

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has no public or private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with the performance of contractor's services and obligations under this agreement. Any such conflict shall be disclosed to the grantee and the grantee shall determine whether such conflict is cause for the non-execution or termination of this agreement. Contractor further covenants that in the performance of this agreement, no person having such interest shall be employed by contractor.

15. Americans with Disabilities Act

Contractor certifies that it shall comply with the provisions of the Americans with Disabilities Act (42 USC Section 12101 et seq.) as it may apply to the services, programs or activities that are to be provided under this agreement.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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Section 871.APPENDIX B Procedures for Determination of Indirect Costs and Indirect Cost Rates

1. Definition:
   Indirect costs are those costs incurred for a common or joint purpose but benefiting more than one cost objective, and not readily identifiable to the cost objectives specifically benefited. The term indirect cost, as used herein, applies to costs of this type occurring in the grantee department (or other relevant organizational unit responsible for project performance), as well as those central service support costs incurred by other departments in supplying goods, services, and facilities to the grantee department when such cost can be assigned to the departmental indirect cost pool as a result of an approved cost allocation plan.
2. General:
   ~~(A)~~ a) Indirect costs of the grantee shall be allowable in accordance with an indirect cost agreement incorporated in the grant agreement. Indirect cost rates and indirect costs as determined below shall be used in the grant agreement but shall be considered to be estimates; the final amount of eligible indirect costs will be based on audited actual costs.
   ~~(B)~~ b) Indirect cost rates are not retroactive and may not be changed during the period of the grant agreement.
   ~~(C) No indirect costs are allowable for reimbursement grants.~~
3. Grantees with Existing ~~USEPA Construction~~ State or Federal Grants:
   ~~(A)~~ a) If the grantee has a current grant from ~~the U.S. Environmental Protection Agency (USEPA) for construction of a sewage treatment works~~ a State or federal agency, the most recently established indirect cost rate in that grant will be used by the Agency, provided that the rate was established in accordance with 40 CFR 30.410 and 40 CFR 30.412. (July 1, 1986) (This incorporation contains no later amendments or additions.):
   ~~(B)~~ b) If the grantee has a current State or federal grant ~~from USEPA for the construction of treatment works which~~ that shows a zero indirect cost rate or ~~which~~ that specifies that there is no indirect cost rate, it is not eligible to establish an indirect cost rate for a ~~state~~ planning grant.
   ~~(C)~~ c) To establish an indirect cost rate under this section, the Agency will require:
      ~~(1)~~ 1) copies of all executed grants currently in effect between the grantee and ~~USEPA~~ State or federal agencies, certified by the clerk or other appropriate official of the grantee; and
      ~~(2)~~ 2) a letter from an appropriate official of the grantee, authorizing representatives of the Agency to have access to the federal audit which served as the basis of the indirect cost rate in the ~~USEPA~~ State or federal grants.
   ~~(D)~~ d) If the grantee has more than one currently effective ~~USEPA~~

~~construction grant~~ State or federal grant with differing indirect cost rates, the Agency will determine which of the ~~federally~~ approved indirect cost rates is most appropriate for use on the ~~state~~ State planning or enforcement grant ~~project~~. The most appropriate indirect cost rate is that rate derived from the prior existing project which was most similar in scope, objectives, methodology and personnel to the project for which the Enforcement or Planning grant is sought.

4. ~~Grantee~~ Grantees without Existing ~~USEPA Construction~~ State or Federal Grants:

For grantees ~~which~~ that do not have existing current ~~USEPA construction~~ State or federal grants, either of the following procedures may be used to establish an indirect cost rate:

~~(~~A~~)~~ a) A negotiated lump sum for overhead may be established, based on the grantee's submission of evidence of estimated charges to be incurred. The provisions of applicable federal regulations will be used as guidance in establishing such a lump sum. Lump sum indirect costs negotiated under this provision may not exceed one percent of the total project cost~~.~~; or

~~(~~B~~)~~ b) A negotiated indirect cost rate may be established~~,--in-the-manner-described-in-applicable-federal-regulations,~~ in accordance with ~~either--of~~ the following procedures: the grantee shall follow the Agency's criteria in determining eligibility of specific items used in establishing an indirect cost rate, submit the completed indirect cost rate determination to the Agency with calculations and assumptions made within the calculations, and provide a certification from an appropriate official of the grantee that the information submitted is, to the best of its knowledge, true and accurate. Under this Section, total indirect costs may not exceed five percent of the total estimated project cost.

~~(1) For-projects-whose-total-estimated-project-cost-is-less-than $10--million,-the-grantee-shall-follow-the-Agency's-criteria for-use-in-determining-eligibility-of-specific-items-used-in establishing-an-indirect-cost--rate,--submit--the--completed indirect---cost---rate--determination--to--the--Agency--with substantiation,--and--provide--a---certification---from---an appropriate--official--of--the--grantee-that-the-information submitted-is,--to--the--best--of--its--knowledge,--true--and accurate.---Under-this-section,-total-indirect-costs-may-not exceed-five-percent-of-the-total-estimated-project-cost.~~

~~(2) For-projects-with-a-total-project--cost--of--more--than--$10 million,-the-grantee-may-propose-an-indirect-cost-rate,-with substantiation-and-justification,-to-the-Agency.--The-Agency will--review--the--submitted--information-in-accordance-with guidance-and-procedures-described-in-40-CFR--30.410--and--40 CFR-30.412.~~

5. Disputes:

The grantee will be notified in writing of Agency approval or disapproval of a proposed indirect cost rate. If the Agency disapproves the proposed rate, its reasons for disapproval shall be stated, together with a more appropriate method of determination. If the grantee does not accept the Agency's determination of a more appropriate method, it may contest it pursuant to the provisions of Section 871.304 of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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1. Heading of the Part: Procedures for Issuing Solid Waste Planning and Enforcement Grants

2. Code Citation: 35 Ill. Adm Code Part 870

3. Section Numbers: Proposed Action:

870.101	Amended
870.102	Amended
870.201	Amended
870.202	Amended
870.203	Amended
870.204	Amended
870.205	Amended
870.206	Amended
870.207	Repealed, New
870.208	Repealed
870.209	Amended
870.210	Amended
870.211	Amended
870.212	Repealed
870.301	Amended
870.302	Amended
870.303	Amended
870.304	Amended
870.305	Amended
870.306	Amended
870.307	Repealed
870.308	Amended
870.309	Amended
870.310	Amended

4. Statutory Authority: Section 22.15 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.15) [415 ILCS 5/22.15].

5. A Complete Description of the Subjects and Issues Involved: Section 22.15(g) of the Environmental Protection Act ("Act") authorizes the Agency to provide financial assistance from the Solid Waste Management Fund to units of local government in planning for the management of nonhazardous solid waste or municipal waste or for plans prepared pursuant to the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act. Funding for up to 70% of the total project costs not to exceed $500,000 for each grantee is available from the Agency.

Two types of planning grants are currently administered by the Agency through 35 Ill. Adm. Code Part 870. Phase I grants involve data collection on the grantee's current municipal waste management situation, which is then

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analyzed for the development of a Needs Assessment Report.

Phase II grants result in a Municipal Waste Management Plan, using the Phase I data to evaluate and select recommended alternatives for handling the grantee's municipal waste over the next 20 years. The grant rules contain the requirements for grant assistance availability and criteria, grant application contents, grant award action, evaluation of performance, and noncompliance remedies. Since 1986, the Agency has issued 80 planning grants, with the state share at over $7 million.

The Solid Waste Planning and Recycling Act, (Ill. Rev. Stat. 1992, ch. 85, par. 5951 et seq.) [415 ILCS 15/1 et seq.] adopted in 1988, mandates that all counties adopt municipal waste management plans by March 1, 1995.

Revisions are being made to the grant rules to make the planning requirements consistent with the provisions of the Solid Waste Planning and Recycling Act (SWPRA). This law mandates that counties develop, adopt, and implement long-term plans for the management of only municipal waste. Although the Act authorizes the Agency to provide financial assistance to eligible applicants for planning for the management of nonhazardous solid waste or municipal waste, the rules are being revised to incorporate the planning provisions from the SWPRA for only municipal waste, to ensure consistency in the planning process. Therefore, references to planning grants include only municipal waste.

No recent legislative changes have been made that affect the scope of the enforcement grant program. The Act authorizes the Agency to make financial assistance available to eligible applicants for local inspection and enforcement activities at nonhazardous solid waste disposal sites. In an attempt to ensure consistency with the municipal planning efforts local governments are undertaking, references to enforcement grants will be for nonhazardous solid waste or municipal waste.

An amendment to the Environmental Protection Act, P.A. 87-330, (effective January 1, 1992), authorizes the Agency to provide financial assistance from the Solid Waste Management Fund to counties and municipal joint action agencies for implementing municipal waste management plans adopted pursuant to the Solid Waste Planning and Recycling Act. Such assistance shall not exceed 70% of the total costs of the project or program. Priority in the awarding of such assistance shall be given to projects and programs that are designed to produce significant increases in waste reduction or recycling.

The proposed rules would initiate a Phase III grant program to allow counties and municipal joint action agencies to continue plan implementation. The rules provide for grant assistance availability, allocation, and grant application content. These rules would become part of 35 Ill. Adm. Code Part 870, that provide for Agency action, evaluation of

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performance, and noncompliance remedies.

6. Will this proposed rule replace an emergency rule currently in effect? No

7. Does this rulemaking contain an automatic repeal date? No

8. Does this proposed rule (amendment, repealer) contain incorporations by reference? No

9. Are there any other proposed amendments pending on this Part? No

10. Statement of Statewide Policy Objectives: These proposed rules do not create or enlarge a state mandate as defined in Section 3(b) of the State Mandates Act (Ill. Rev. Stat. 1991, ch. 85, par. 2203(b)) [30 ILCS 805/3(b)], in that it is a voluntary grant program.

11. Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit written comments on these proposed rules may submit them in writing by no later than 45 days after publication of this notice to:

Ms. Kimberly Robinson
Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

12. Initial Regulatory Flexibility Analysis:

A) Date rule was submitted to the Business Assistance Office of the Department of Commerce and Community Affairs: N/A

B) Types of small businesses affected: Small businesses are not eligible to apply for these grants; therefore, no small businesses are affected. The law allows only counties and municipal joint action agencies (as defined in Section 3.2 of the Intergovernmental Cooperation Act) to apply for Phase III grants. Municipal joint action agencies are governmental bodies which may be formed by several counties, or a group of municipalities. Although these entities may not directly apply for these grants, they may be affected by these grants if they participate in a municipal joint action agency.

C) Reporting, bookkeeping or other procedures required for compliance: Proposed 35 Ill. Adm. Code 870.204 outlines in detail the required contents of an application for a Phase III municipal waste planning implementation grant. It includes documentation on the activities, tasks, duties, assignments, and functions within the program as well as

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cost justifications.

D) Types of professional skills necessary for compliance:

Persons with a solid waste management background, or grant administration or planning experience would be able to complete the grant application and produce the required grant outputs. A professional engineer's involvement is required for reviewing appropriate grant outputs for facilities needing state permits.

The full text of the Proposed Rule begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 870
PROCEDURES FOR ISSUING ~~SOLID~~ MUNICIPAL WASTE
PLANNING AND SOLID WASTE OR MUNICIPAL WASTE ENFORCEMENT GRANTS

SUBPART A: INTRODUCTION

Section
870.101 Purpose
870.102 Definitions
870.103 Severability

SUBPART B: ~~SOLID~~ MUNICIPAL WASTE PLANNING GRANTS

Section
870.201 Grant Assistance Availability
870.202 Assistance Amount
870.203 Allocation
870.204 Required Content of Applications for ~~SWP~~ SMP Grants
870.205 Agency Action on Application
870.206 Grant Award and Acceptance
870.207 ~~Evaluation of Performance~~ Grantee Responsibilities
870.208 Supplemental SWP Grants (Repealed)
870.209 Grant Payment Schedule
870.210 Noncompliance with Grant Conditions
870.211 Indemnity
870.212 Guidance for Planning

SUBPART C: NONHAZARDOUS SOLID WASTE OR MUNICIPAL WASTE ENFORCEMENT GRANTS

Section
870.301 Grant Assistance Availability
870.302 Assistance Amount
870.303 Required Content of Applications for ~~SWE~~ SME Grants
870.304 Agency Action on Application
870.305 Grant Award and Acceptance
870.306 Evaluation of Performance
870.307 Supplemental SWE Grants
870.308 ~~Requests for Payment~~ Grant Payment Sche
870.309 Noncompliance with Grant Conditions
870.310 Indemnity

AUTHORITY: Implementing and authorized by Section 22.15 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.15) [415 ILCS 5/22.15].

SOURCE: Emergency rules adopted at 10 Ill. Reg. 17780, effective September 29, 1986, for a maximum of 150 days. Adopted at 11 Ill. Reg. 9585, effective May 15, 1987; amended at 14 Ill. Reg. 19024, effective November 13, 1990; amended at 15 Ill. Reg. 9311, effective June 18, 1991; amended at 19 Ill. Reg. _____, effective _____.

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SUBPART A: INTRODUCTION

Section 870.101 Purpose

a) The Illinois Solid Waste Management Act (Ill. Rev. Stat. ~~1989~~ 1991, ch. 111 1/2, par. 7051 et seq.) [415 ILCS 201] amended the Environmental Protection Act (Ill. Rev Stat. 1991, ch. 111 1/2, par. 1001 et seq.) [415 ILCS 5] (Act) by adding Section 22.15, of the Act which authorized the Environmental Protection Agency ~~(Agency)~~ to:
   1) *Provide financial assistance to units of local government in planning for the management of nonhazardous solid waste or municipal waste where alternatives to disposal of nonhazardous solid waste or municipal waste in a sanitary landfill will receive full evaluation and consideration in the planning process; or in plans prepared pursuant to the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act* (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.15(g)) [415 ILCS 5/22.15(g)]; and
   2) *~~To--provide~~ Provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r) of the Act at nonhazardous solid waste or municipal waste* disposal sites (Ill. Rev. Stat. ~~1989~~ 1991, ch. 111 1/2, par. 1022.15(h)). [415 ILCS 5/22.15(h)].

b) This part sets forth the procedures used by the Agency in the issuance of grants to units of local government for:
   1) planning the management of nonhazardous solid waste in accordance with Section 22.15(g) of the Act; and
   2) inspecting, investigating and enforcement activities at nonhazardous solid waste disposal sites in accordance with Section 22.15(h) of the Act.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.102 Definitions

For purposes of this Part, the words and terms used in this Part shall have meanings below. Words and terms not defined in this Part, if defined in the Environmental Protection Act, (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et

seq.) [415 ILCS 5] shall have the meanings as defined therein. Words and terms not defined in this Part and not defined in the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et seq.) [415 ILCS 5] shall have the meaning as defined in the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, par. 5951 et seq.) [415 ILCS 15].

~~a) Unless specified otherwise, all terms shall have the meanings set forth in the Environmental Protection Act.~~

~~b) For purposes of this Part the following definitions apply:~~

"Act"~~:~~ or "Environmental Protections Act" means the Environmental Protection Act (Ill. Rev. Stat. ~~1989~~ 1991, ch. 111 1/2, par. 1001 et seq.) [415 ILCS 5], as amended.

"Advertising" means costs for advertising related to grant activities. Public notices, newspaper advertisements, and consultant procurement costs are typically included in the advertising category.

"Agency" means the Environmental Protection Agency established by the Environmental Protection Act. (Section 3.01 of the Act).

"Allowable costs" means allocable project cost of the grantee that are reasonable and necessary. These may include, but are not limited to:
Costs of salaries, benefits, and expendable material incurred by the grantee for the project, except as provided in 35 Ill. Adm. Code 871.601(b)(7);
Professional and consultant services;
Project feasibility and engineering reports; and
Materials acquired, consumed, or expended specifically for the project.

"Amortization" means the pro-rating of appropriate other direct costs over a useful life, and the subsequent submittal of the pro-rated cost to the Agency for reimbursement.

"An accounting" means a compilation of documentation to establish, substantiate and justify the nature and extent to the charges for which the grantee is requesting reimbursement.

"Applicant" means the unit local government that is applying for a municipal waste planning or nonhazardous solid or municipal waste enforcement grant under Section 22.15 of the Act.

"Combustion" as applied to municipal waste, means the incineration of municipal waste for either energy recovery or volume reduction.

"Commercial waste" as applied to municipal waste, means nonhazardous

waste originating from wholesale, retail, or service establishments such as office buildings, stores, markets, theaters, hotels, motels, and warehouses.

"Composting" *means the biological treatment process by which microorganisms decompose the organic fraction of waste, producing compost.* (Section 3.70 of the Act).

"Computer charges" means expenses related to the lease or rental of computers, printers, and accessories.

"Conference or Training registration" means expenses related to registration for conferences, workshops, seminars, and training which are grant-related.

"Construction or demolition debris" as applied to municipal waste, means nonhazardous materials, such as broken concrete, stone, rock, bricks or building or construction debris resulting from construction or demolition activities.

"Content" as applied to municipal waste, means the composition or characterization that waste.

"Contractor" means the person, as defined in Section 3.26 of the Act, to whom a subagreement is awarded.

"Delegation agreement" means an agreement authorized by Section 4(r) of the Act under which the Agency may delegate inspection, investigation and enforcement authority at nonhazardous solid or municipal waste facilities or sites to a unit of local government.

"Direct labor costs" means expenses for personnel working on grant-related activities that can be directly identifies to the grant. These costs may include costs for the applicant's or grantee's direct personnel, in-kind contributions, and fringe benefits, but do not include contractors' costs.

"Direct personnel costs" means expenses for an applicant's or grantee's employees that can be directly identified to the grant. These costs do not include subcontractors' costs.

"Directly identifiable costs" means grant expenses that can be documented and traced to allowable grant activities, and are supported by accurate and adequated documentation, such as timesheets, receipts, logs and vouchers.

"Economic assessment" means a study, review, or evaluation of the economic effects of a particular municipal waste management option or

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combination of options on the study area.

"Environmental assessment" means a study, review, or evaluation of the environmental affects of a particular municipal waste management option or combination of options on the study area.

"Equipment" means items to be purchased for grant activities that individually cost $50 or more and have a useful life of one year or more. These typically include office furniture, computers and printers, calculators and adding machines, and cameras.

"Expensed" means that requests for reimbursement for other direct costs are submitted by the grantee during the year in which the costs were accrued.

"Facilities, projects or programs" as applied municipal waste management, means existing and proposed sites, operations, activities, and other recommended actions related to municipal waste management planning.

"Fringe benefits" means benefits for the applicant's or grantee's personnel. These may include, but are not limited to, social security, retirement, unemployment insurance, workers' compensation, and health insurance.

"Garbage" means *waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage, and sale of produce.* (Section 3.11 of the Act).

"General household waste" as applied to municipal waste, means nonhazardous solid waste originating in single and multiple-family dwellings.

"Grant agreement" means the written agreement and amendments thereto between the Agency and a grantee in which the terms and conditions governing the grant are stated and agreed to by both parties.

"Grantee" means the unit of local government that has been awarded a grant for municipal waste planning or nonhazardous solid or municipal waste enforcement under Section 22.15 of the Act.

"Implementation" as applied to municipal waste planning, means activities related to the initiation or execution of facilities, projects, or programs included in an adopted waste management plan.

"Indirect Costs" means those costs incurred by as applicant or grantee for a common or joint purpose but benefitting more than one cost

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objective, and not readily identifiable to the cost objectives specifically benefitted (35 Ill. Adm. Code 871.Appendix B).

"Industrial lunchroom or office waste" means non-industrial waste produced in industrial lunchrooms, cafeterias or food-serving functions, or offices.

"In-Kind contributions" means goods and services donated to the applicant's or grantee's grant program by a second unrelated party. These goods and services must be contributed to the applicant or grantee and a fair market value must be assigned to these contributions.

"Institutional waste" as applied to municipal waste, means non-industrial waste originating in facilities such as schools, hospitals, correctional facilities, and research institutions.

"Landscape Waste" means *all accumulations of grass or shrubbery cuttings, leaves, tree limbs and other materials accumulated as the result of the care of lawns, shrubbery, vines and trees.* (Section 3.20 of the Act).

"Licensed professional engineer" means and individual currently licensed to practice professional engineering in the State of Illinois.

"Local Solid Waste Disposal Act" means the Local Solid Waste Disposal Act (Ill. Rev. Stat. 1991, ch. 85, par. 5901 et seq.) [415 ILCS 10]

"Municipal joint action agency" means a planning or implementation agency formed pursuant to Section 743 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1991, ch. 127, par. 743) [5 ILCS 220/3] consisting of any two or more municipalities, counties, or combination thereof formed by intergovernmental agreement, to provide for efficient and environmentally sound collection, transportation, processing, storage, and disposal of municipal waste.

"Municipal waste" means *garbage, general household, institutional and commercial waste, industrial lunchroom or office waste, landscape waste, and construction or demolition debris.* (Section 3 of the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, par. 5951 et seq.) [415 ILCS 15]).

"Municipal waste management plan" means a program designed to manage municipal waste over a 20-year period. Plans shall include an evaluation of the existing municipal waste management system and a set of recommended actions that matches municipal waste management alternatives to applicable portions of the waste stream, and shall be

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adopted in accordance with the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, par. 5951 et seq.) [415 ILCS 15].

"Municipal waste management planning" means the evaluation of various municipal waste management alternatives, using economic, energy, environmental, political, and technical criteria appropriate to the planning area for incorporation in a municipal waste management plan to be adopted in accordance with the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, 5951 et seq.) [415 ILCS 15/3].

"SWE--Grants"--or "Solid Municipal Waste Enforcement Grants": or "MWP Grants" means grants issued pursuant to Section 22.15(h) of the Act and Subpart C of this Part.

"SWP--Grants"--or "Nonhazardous Solid Waste or Municipal Waste Planning Grants": or "SMWE Grants" means grants issued pursuant to Section 22.15(g) of the Act and Subpart B of this Part.

"Office lease and utility expenses" means expenses for the lease or rental of office space, and the concomitant utility expenses such as for heat and electricity.

"Origin" as applied to municipal waste, means the source of that waste, such as the general household, commercial, or institutional sector of the waste stream.

"Other direct costs" means those grant costs that can be directly identified as grant-related. These include travel, equipment, supplies, postage, advertising, computer charges, telecommunications, office lease and utility costs, vehicle charges, printing, and conference and training registration.

"Outputs" means all draft and final reports, documents, plans, and other materials produced for grant program elements. These include Phase I-Needs Assessment and Phase II-Municipal Waste Management Plans adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, pars. 5951 et seq.) [415 ILCS 15].

"Phase I MWP Grant" means a Municipal Waste Needs Assessment Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(b).

"Phase II MWP Grant" means a Municipal Waste Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(c).

"Phase III MWP Grant" means a Municipal Waste Implementation Planning Grant issued pursuant to Section 22.15(g) of the Act and 35 Ill. Adm. Code 870.204(d).

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"Postage" means expenses for transmitting mail and package for grant activities. These typically include regular, certified, express mail, and shipping charges for packages.

"Printing" means expenses related to copying, printing, reproduction, and document preparation.

"Program elements" means all activities, tasks, duties, assignments, functions, or responsibilities to be conducted to complete grant outputs, projects or programs.

"Recycling center" means *a site or facility that accepts only segregated, nonhazardous, nonspecial, homogenous, nonputrescible materials, such as dry paper, glass, cans or plastics, for subsequent use in the secondary materials market.* (Section 3.81 of the Act).

"Recycling program" means facilities, projects, activities, or recommendations included in a municipal waste management plan that comply with the provisions of the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, par. 5951 et seq.) [415 ILCS 15].

"Recycling, reclamation or reuse" means *a method, technique or process designed to remove any contaminant from waste so as to render such waste reusable, or any process by which materials that would otherwise be disposed of or discarded are collected, separated or processed and returned to the economic mainstream in the form of raw materials or products.* (Section 3.30 of the Act).

"Solid Waste" means *waste.* (Seciton 3.82 of the Act).

"Solid Waste Management Act" means the Solid Waste Management Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 7051 et seq.) [415 ILCS 20].

"Solid Waste Planning and Recycling Act" or "SWPRA" means the Solid Waste Planning and Recycling Act (Ill. Rev. Stat. 1991, ch. 85, par. 5951 et seq.) [415 ILCS 15].

"Source reduction" as applied to municipal waste, means the design, manufacture, acquisition, purchase, or use of materials or productions to reduce the amount, or toxicity of municipal waste before it enters the municipal waste stream. This may be accomplished through the redesign of manufacturing processes; redesign of products; changes in consumer's purchasing decisions, use, and disposal habits; and backyard composting.

"State" means the State of Illinois.

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"Subagreement" means a written agreement between the grantee and another party, such as a contractor, and any tier of agreement thereunder for the furnishing of services, supplies, or equipment necessary to complete the project for which a grant was awarded, including contracts for personal and professional services and purchase orders.

"Subcontractor progress report" means a summary of a subcontrator's progress in meeting its task required under a grantee subagreement. Subcontractor progress reports shall include: the tasks completed during the reporting period; a description of any problems or delays; and a listing of current billing information. Subcontractors shall submit progress reports to grantees for transmittal to the Agency in accordance with the schedule in the grant agreement.

"Supplies" means items to be purchased for grant activities that have an individual cost of less than $50, a useful life of less than one year and/or are personal (fitted or sized, such as gloves and boots) in nature.

"Telecommunications" means expenses related to telecommunications, such as telephone installation and usage, portable telephones, and pagers.

"Transfer station" means *a site or facility that accepts waste for temporary storage or consolidation and for further transfer to a waste disposal, treatment or storage facility. "Transfer station" include a site where waste is transferred from*

A rail carrier to a motor vehicle or water carrier;
A water carrier to a rail carrier or motor vehicle;
A motor vehicle to a rail carrier, water carrier or motor vehicle;
A rail carrier to a rail carrier, if the waste is removed from a rail car; or
A water carrier to a water carrier, if the waste is removed from a vessel. (Section 3.83 of the Act).

"Travel" means expenses related to the applicant's or grantee's execution of grant-related activities while on travel status. These typically include mileage, transportation, lodging, meals or per diem, and parking.

"Unallowable costs" means costs that exceed the total amount of the grant offer or which are not necessary for completion of the work required by the grant agreement. Such costs include, but are not limited to:

Areawide planning or enforcement not directly related to the project;

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Bonus payments not legally required for completion of the project;
Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or otherwise;
Fines and penalties resulting from violations, of, or failure to comply with, federal, State or local laws;
Costs outside the scope of the approved planning or enforcement project;
Interest on bonds or any other form of indebtedness required to finance the project costs;
Ordinary operating expenses of local governments, such as salaries and expenses of a mayor, city council members, or city attorney, except as provided in 35 Ill. Adm. Code 871.601(d);
Site acquisition (for example, sanitary landfills and sludge disposals areas);
Costs for which payment has been or will be received under another State or federal assistance program;
Costs of equipment or material procured in violation of any of the 35 Ill. Adm. Code Part 871 provisions;
Costs of special funds (i.e., industry advancement funds; funds to reimburse bidding costs to unsuccessful offerors, etc.) financed by contractors, contributions in the industry for methods and materials research, public and industry relations, market development, labor-management matters, wage negotiations, jurisdictional disputes, or defraying of all or part of unsuccessful offeror's bidding costs.
Costs under contracts that are incurred after the expiration of the applicable contractual completion date, even if the contractual completion date is subsequently extended by the grantee, unless such extention has been approved by the Agency in accordance with 35 Ill. Adm. Code 871.402;
Personal and professional consultant services costs arising under cost-plus-percentage of cost type of agreement (including the multiplier contract where profits is in the multiplier);
Personal and professional consultant services costs when the Agency has been refused access to the book and records of the contractor or the contractor has refused to renegotiate a personal or professional services contract in accordance with 35 Ill. Adm. Code Part 302; and
Increases in personal and professional consultant services contract fees which are based solely on a percentage of an increased costs notwithstanding the contractual liabilities of the grantee under such contract.

"Unit of local government" means a municipality, county, or a municipal joint action agency pursuant to Section 743 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1991, ch. 127, par.

743) [5 ILCS 220/3], or if the context requires, the member municipalities of such an agency or their territory.

"Vehicle changes" means costs for the lease, rental, purchase or utilization of a vehicle for grant activities. If a vehicle is purchased, only an amortized amount, calculated over a 36 month lifespan, may be reimbursed by the Agency.

"Volume reduction at the source" means source reduction.

"Waste" *means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting form industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined in the Atomic Energy Act of 1954, as amended (68 stat. 921) or any solid or dissolved materials from any facility subject to the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto,* except that for the purposes of these rules, waste does not include hazardous waste. (Section 3.53 of the Act).

"Waste audit" or "Waste stream audit" as applied to municipal waste, means a systematic accounting of materials (inputs) and products or waste (outputs) to identify potential waste reduction or recycling opportunities.

"Waste characterization study" as applied to municipal waste, means a study designed to determine estimates of the composition or characterization of that waste.

"Waste generation" as applied to municipal waste, means the weight or volume of materials and products as they enter the municipal waste stream, and before materials recovery, combustion, or landfilling occur.

"Waste reduction" as applied to municipal waste, means all municipal waste management methods resulting in a reduction of municipal waste requiring final disposal. Municipal waste reduction includes, but is not limited to source reduction, recycling, composting, and shredding and compaction of municipal waste.

"Waste stream" as applied to municipal waste, means the waste

generated by a specific sector as it moves from generation to final handling. A waste stream may include the municipal waste stream components, the total waste stream, or any component thereof.

(Source: Amended at 19 Ill. Reg. _____ effective _____)

SUBPART B: ~~SOLID~~ MUNICIPAL WASTE PLANNING GRANTS

Section 870.201 Grant Assistance Availability

a) Subject to the availability of funding and the limitations and requirements set forth in this Part, grant assistance is available for the following planning projects and programs for the management of ~~nonhazardous solid~~ municipal waste:
   1) Phase I ~~SWP~~ SMP Grants (~~Solid~~ Municipal Waste Needs Assessment).
   2) Phase II ~~SWP~~ SMP Grants (~~Solid~~ Municipal Waste Planning).
   3) Phase I + and II ~~SM~~MWP Grants (~~Solid~~ Municipal Waste Needs Assessment and Planning).
   4) Phase III MWP Implementation Grants (Municipal Waste Implementation Planning).
b) The State share for total eligible costs for ~~Phase I or Phase II SWP~~ SMP Grants shall not exceed 70 percent.
c) Forms and instructions for applying for grant funding will be made available to eligible units of local government by the Agency.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.202 Assistance Amount

a) The amount of assistance to be provided to an applicant will be based on:
   1) Identification of a need for planning in the affected area for management of ~~solid~~ municipal waste;
   2) Provision of a specific means for satisfying that need through development of information conducive to the full evaluation and consideration of each preferred alternative to landfill facilities as identified in Section 2(b) of the Illinois Solid Waste Management Act;
   3) Demonstration that the costs of the work program do not exceed the benefits from the proposed outputs. If the Agency's evaluation indicates that the proposed outputs do not justify the level of funding requested, the Agency may reduce the assistance amount; and
   4) The extent to which the applicant's work program is demonstrated to be necessary and appropriate and to the extent that the anticipated cost of the applicant's program is proportionate to

the proposed outputs.

b) No combination of ~~SWP~~ SMP Phase I and II ~~Grant or grants~~ Grants issued under this Subpart may provide aggregate financial assistance in excess of $500,000.

c) Counties and municipal joint action agencies shall be eligible for Phase III Municipal Waste Implementation Planning Grants. No Phase III Municipal Waste Implementation Planning Grant issued under this Subpart shall provide financial assistance in excess of $500,000.

d) Phase III Municipals Waste Implementation Planning Grants will not be issued to counties and municipal joint action agencies without an adopted plan that has been deemed by the Agency to meet the requirements of the Solid Waste Planning and Recycling Act, and any other applicable State legislation. These grants will provide funding for further planning toward implementation of municipal waste management alternatives identified in adopted plans. These adopted plans may be developed with State financial assistance. The issuance of Phase III grants is not contingent upon receipt of previous State financial assistance.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.203 Allocation

a) ~~SWP~~ SMP Phase I and II grant funds shall be allocated for approved applications in the order of receipt of complete applications, to the extent that funds are available and appropriate. Priority in awarding grant funding shall be given to applicants that:
   1) Have received no prior MWP grants; or
   2) Are conducting planning in areas for which no previous planning activities have occurred.

b) The Agency shall make application forms, and other forms, and instructions, available to counties and municipal joint action agencies to apply for Phase III grant funding. The Agency shall accept applications for Phase III Municipal Waste Implementation Planning Grants only on December 30 and June 30 of each year. Applicants must submit application on forms prescribed and provided by the Agency.
   1) To the extent that funds are available and appropriated, priority in reviewing grant applications shall be given to applicants based on the date and time that a complete application is received from the grant applicant by the Planning and Grants Unit, Solid Waste Management Section, Division of Land Pollution Control, Bureau of Land, Illinois Environmental Protection Agency. For purposes of review prioritizaton, a complete Phase III grant application must:
      A) Include ordinance or resolution by the applicant certifying that a municipal waste management plan has been adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act. If the plan has been revised after initial adoption, a resolution or ordinance that designates the revisions as part the plan must be submitted;
      B) Include an ordinance or resolution by the applicant certifying that implementation of the plan, including the recycling program, has begun within one year of plan adoption; and
      C) Adequately address the provisions of Section 870.204(d) of this Part, including but not limited to:
         i) A description of the facilities, project, and programs included in the adopted municipal waste management plan, for which funding is requested, with priority given to projects or projects or programs that are designed to produce significant increases in waste reduction or recycling;
         II) The tasks to be completed for the facility, project, or program. This information shall be specific to the facility, project, or program, and shall address the provisions of Section 870.204(d)(4)(A-D) of this Part;
         III) A work program to be carried out under the grant, including a schedule for completing task and program elements, cost for each program element, and outputs for each program element; and
         iv) Cost justification for the amount requested, including a budget submitted on forms provided and prescribed by the Agency, in accordance with instructions provided by the Agency.
   2) *Priority in the awarding of such assistance shall be given to projects and programs that are designed to produce significant increases in waste reduction or recycling.* (Section 22.15.(g) of the Act). The Agency shall approve or disapprove complete application in accordance with Section 870.205 of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.204 Required Content of Applications for ~~SWP~~ SMP Grants

a) ~~SWP~~ SMP Grants will not be awarded unless complete, acceptable applications are filed in accordance with the requirements of this ~~section~~ Section.

b) ~~An~~ A complete, acceptable application for a ~~SWP~~ SMP Grant for a Phase I -- ~~Solid~~ Municipal Waste Needs Assessment shall address and provide information for the following:
   1) The geographic area to be encompassed by the grant, including demographic data.
   2) The methods to be used in assessing ~~solid~~ municipal waste needs

and obtaining the information required under subsection (b)(3) below. These may include, but not be limited to, surveys, literature reviews, waste characterization studies, and weighing and sorting projects. The statistical methodology that will be used to ensure that the data to be collected is accurate shall be included.

3) Methods and procedures by which the following information will be acquired:

~~A) Residential solid waste generated annually;~~

~~B) Industrial and commercial solid waste generated annually;~~

A) Origin, content, and weight or volume of municipal waste currently generated.

~~C)~~B) ~~Volume,~~ Origin, content, and weight, or volume ~~and type~~ of municipal waste annually disposed in landfills;

~~D)~~ C) ~~Volume,~~ Origin, content, and weight, or volume ~~and type~~ of municipal waste annually recycled, reclaimed, or re-used;

~~E)~~D) ~~Volume,~~ Origin, content, and weight, or volume ~~and type~~ of municipal waste annually ~~burned~~ combusted for energy recovery;

~~F)~~E) ~~Volume,~~ Origin, content, and weight, or volume ~~and type~~ of municipal waste annually ~~incinerated~~ combusted for volume reduction;

~~G)~~F) Weight or volume ~~Volume, weight, and type~~ of municipal waste annually transported into (imported) and out of (exported) the study area;

~~H)~~G) Average distance ~~solid~~ municipal waste is transported before final handling; ~~and~~

~~I)~~H) Weight or volume ~~Volumes, weight,~~ and handling methods used for ~~solid~~ municipal waste managed on-site~~;~~ and

I) *A description of the facilities where municipal waste is currently being processed or disposed of and the remaining available permitted capacity of such facilities.* (Section 4 of the SWPRA).

4) Projections ~~Projection~~ of information required under subsection (b)(3) above for ~~five and~~ twenty years from the study date as required by the SWPRA.

5) The work program to be carried out under the grant. The work program must specify:

A) Number of months and/or ~~Work~~ work years needed for each program element;

B) The ~~the~~ outputs committed to under each program element, including outputs required under subsections (b)(3) and (b)(4) above;

C) A ~~a~~ schedule for accomplishment of outputs and the tasks to be accomplished to meet the outputs;

D) Identification ~~identification~~ of the unit of local government responsible for each of the elements and outputs; and

E) identification of the public involvement process to be used in developing the program. At a minimum, such process shall provide for at least one public meeting to be held, after reasonable notice to the public, for the purpose of receiving public comment.

6) Cost justifications for the amount requested, including a budget submitted on forms prescribed and provided by the Agency for the expenses to be incurred. ~~The budget shall include:~~

~~A) Demonstration of source of funds for the local share;~~

~~B) Direct Costs, which shall be itemized as follows:~~

~~i) personal services~~

~~ii) fringe benefits~~

~~iii) travel~~

~~iv) equipment~~

~~v) contractual support~~

~~vi) supplies~~

~~vii) other direct costs;~~

~~C) Indirect costs;~~

With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all costs must be directly identified as grant related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant.

7) The budget, which shall be submitted to the Agency on forms prescribed and provided by the Agency, shall include at a minimum:

A) Demonstration through an ordinance or resolution of source of funds for the local share.

B) Direct labor costs, which shall be itemized as follows:

i) Direct personnel;

ii) In-kind contributions;

iii) Fringe benefits.

C) Indirect costs, as defined and described in 35 Ill. Adm. Code 871.Appendix B.

D) Other direct costs include:

i) Travel;

ii) Equipment;

iii) Supplies;

iv) Postage;

v) Advertising;

vi) Computer charges;

vii) Telecommunications;

viii) Office lease and utility cost;

ix) Vehicle charges;

x) Printing; and

xi) Training and conference registration.

E) Subagreements.

F) Total estimated cost.

G) Source of funds by budget category.
H) Allocation of funds by State fiscal year.
I) Local contributions.

c) An application for a ~~SWP~~ SMP Grant for Phase II -- ~~Solid~~ Municipal Waste Planning shall address and provide information for the following:

1) The geographic area to be encompassed by the grant, including demographic data.

2) An assessment of the ~~solid~~ municipal waste needs for the planning area which includes the information required under subsections (b)(3) and (b)(4) above.

3) The ~~methods~~ outputs to be ~~used~~ developed by the applicant in planning for the *Effective and efficient management of solid* or municipal *waste in a manner that promotes economic development, protects the environment and public health and safety and allows the most practical and beneficial use of the material and energy values of solid* or municipal *waste*. (Section 2(a)(4) of the Illinois Solid Waste Management Act)~~;~~.

4) The ~~methods~~ outputs to be ~~used~~ developed by the applicant to assure that, with respect to all identified ~~solid~~ municipal waste needs for the planning area, *alternatives to disposal of nonhazardous waste in a sanitary landfill will receive full evaluation and consideration in the planning process*~~;~~ *or in plans prepared pursuant to the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act*. (Section 22.15(g) of the Act). The applicant must demonstrate the environmental, economic ~~fiscal~~ , and technical feasibility aspects of each alternative in accordance with *the following management hierarchy, in ~~descending~~ descending order of preference:*

A) *Volume reduction at the source*~~;~~.
B) *Recycling and reuse*~~;~~.
C) *Combustion with energy recovery*~~;~~.
D) *Combustion for volume reduction*~~;~~.
E) *Disposal in landfill facilities*~~;~~.

(Section 2(b) of the Illinois Solid Waste Management Act).

5) The methods to be used by the applicant to ensure development of a municipal waste management plan in accordance with the Solid Waste Planning and Recycling Act or the Local Solid Waste Disposal Act. These methods shall provide, at a minimum, the following:

A) *A description of the origin, content, and weight or volume of municipal waste currently generated within* the planning area's *boundaries, and the origin, content, and weight or volume or municipal waste that will be generated during the next 20 years, including as assessment of the primary variables affecting this estimate and the extent to which they can reasonable be expected to occur;*

B) *A description of the facilities where municipal waste is currently being processed or disposed of and the remaining available permitted capacity of such facilities;*

C) *A description of the facilities and programs that are proposed for the management of municipal waste generated within the* planning area's *boundaries during the next 20 years, including, but not limited to their size, expected cost and financing method;*

D) *An evaluation of the environmental, energy, life cycle cost and economic advantages and disadvantages of the proposed waste management facilities and programs;*

E) *A description of the time schedule for the development and operation of each proposed facility or program.* (Section 4 of the SWPRA);

F) *The identity of potential sites within the* planning area *where each proposed waste processing, disposal, and recycling program will be located or an explanation of how the sites will be chosen. For any facility outside the* planning area *that is proposed to be used, the plan shall explain the reasons for selecting such facility.* (Section 4 of the SWPRA);

G) *If the plan concludes that waste stream control measures are necessary to implement the plan, provide the identification of those measures.* (Section 3 of the Local Solid Waste Disposal Act);

H) *The identity of the governmental entity responsible for implementing the plan and an explanation of the legal basis for the entity's authority to do so.* (Section 6 of the SWPRA);

I) *Adequate provision for the present and reasonably anticipated future needs of the recycling and resource recovery interests within the area.* (Section 3 of the Local Solid Waste Disposal Act); and

J) A description of the planning area's recycling program. Such recycling program:

i) *shall be* designed to be *implemented throughout the* planning area's *boundaries, and* shall *include a time schedule for implementation.*

ii) *shall provide for the designation of a recycling coordinator to administer the program.*

iii) *shall be designed to recycle, by the end of the third and fifth years of the program respectively, 15% and 25% of the municipal waste generated,* in the planning area, *subject to the existence of a viable market for the recycled material, based on measurements of recycling and waste generated in terms of weight. The determination of recycling rate shall not include: discarded motor vehicles, wastes used for clean fill or erosion control, or commercial,*

institutional, or industrial machinery or equipment.

iv) *may provide for the construction and operation of one or more recycling centers by a unit of local government, or for contracting with other public or private entities for the operation of recycling centers.*

v) *May* be designed to *require residents to separate recyclable materials at the time of disposal or trash pick-up.*

vi) *May* be designed to *make special provision for commercial and institutional establishments that implement their own specialized recycling programs, provided that such establishments annually provide written documentation of the total number of tons of material recycled* in the planning area.

vii) *shall* be designed to *provide for separate collection and composting of leaves.*

viii) *shall include public education and notification programs to foster understanding of and encourage compliance with the recycling program.*

ix) *shall* be designed to *include provisions for compliance, including incentives and penalties.*

x) *shall include provisions for recycling the collected materials, identifying potential markets for at least 3 recyclable materials, and promoting the use of products made from recovered or recycled materials among businesses, newspapers, and local governments in the* planning area.

xi) *may* be designed to *provide for the payment of recycling diversion credits to public and private parties engaged in recycling activities.* (Section 6 of the SWPRA).

K) *Any other information that the Agency may require.* (Section 4 of the SWPRA).

65) The work program to be carried out under the grant. The work program ~~must~~ shall specify:

A) The number of months and/or work years needed for each program element;

B) ~~the~~ The outputs committed to under each program element including outputs required under subsections 870.204(c)(3) and (c)(4) above;

C) ~~a~~A schedule for accomplishment of outputs and the tasks to be accomplished to meet the outputs;

D) ~~identification of the~~ The unit of local government responsible for each of the elements and outputs; and

E) ~~identification of the~~ The public involvement process to be used in developing the program. At a minimum, such process shall comply with the public involvement process included in

the Solid Waste Planning and Recycling Act, and provide for at least one public hearing ~~meeting~~ to be held, after reasonable notice to the public, for the purpose of receiving public comment.

76) Cost justifications for the amount requested including a budget submitted on forms prescribed and provided by the Agency for the expenses to be incurred. ~~The budget shall include:~~

~~A) Demonstration of the source of funds for the local share;~~

~~B) Direct costs, which shall be itemized as follows:~~

~~i) personal services~~

~~ii) fringe benefits~~

~~iii) travel~~

~~iv) equipment~~

~~v) contractual support~~

~~vi) supplies~~

~~vii) other direct costs;~~

~~C) Indirect costs.~~

With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all costs must be directly identified as grant-related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant.

8) The budget, which shall be submitted to the Agency on forms prescribed and provided by the Agency, shall include at a minimum:

A) Demonstration through an ordinance or resolution of the source of funds for the local share.

B) Direct labor costs, which shall be itemized as follows:

i) Direct personnel;

ii) In-kind contributions; and

iii) Fringe benefits.

C) Indirect costs, as defined and described in 35 Ill. Adm. Code 871.Appendix B.

D) Other direct costs, which shall include:

i) Travel;

ii) Equipment;

iii) Supplies;

iv) Postage;

v) Advertising;

vi) Computer charges;

vii) Telecommunications;

viii) Office lease and utility costs;

ix) Vehicle charges;

x) Printing; and

xi) Training and conference registration.

E) Subagreements.

F) Total estimated cost.

G) Source of funds by budget category.

H) Allocation of funds by state fiscal year.

I) Local contributions.

d) A complete, acceptable application for an MWP grant for Phase III -- Municipal Waste Implementation Planning shall address and provide information for the following:

1) The geographic area to be encompassed by the grant, including demographic data.

2) A municipal waste management plan adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act. Such plan shall include an ordinance or resolution by the applicant certifying that a municipal waste management plan has been adopted in accordance with the provisions of the Solid Waste Planning and Recycling Act. If the plan has been revised after initial adoption, a resolution or ordinance which designates the revisions as part of the plan must be submitted. The municipal waste management plan shall address at a minimum the following:

A) *A description of the origin, content, and weight or volume of municipal waste currently generated within the county's* or municipal joint action agency's *boundaries, and the origin, content, and weight or volume of municipal waste that will be generated within the county's* or municipal joint action agency's *boundaries during the next 20 years, including an assessment of the primary variables affecting this estimate and the extent to which they can reasonably be expected to occur;*

B) *A description of the facilities where municipal waste is currently being processed or disposed of and the remaining available permitted capacity of such facilities;*

C) *A description of the facilities and programs that are proposed for the management of municipal waste generated within the county's* or municipal joint action agency's *boundaries during the next 20 years. Including, but not limited to their size, expected cost and financing method;*

D) *An evaluation of the environmental, energy, life cycle cost and economic advantages and disadvantages of the proposed waste management facilities and programs;*

E) *A description of the time schedule for the development and operation of each proposed facility or program;*

F) *The identify of potential sites within the county* or municipal joint action agency *where each proposed waste processing, disposal, and recycling program will be located, or an explanation of how the sites will be chosen. For any facility outside the county* or municipal joint action agency *that is proposed to be used. The plan shall explain the reasons for selecting such facility.* (Section 4 of the SWPRA);

G) *The identity of the governmental entity responsible for implementing the plan on behalf of the county* or municipal joint action agency *and explanation of the legal basis for the entity's authority to do so.* (Section 6 of the SWPRA);

H) A description of the county's or municipal joint action agency's recycling program. Such recycling program:

i) *shall be implemented throughout the county's* or municipal joint action agency's *boundaries, and* shall *include a time schedule for implementation;*

ii) *shall provide for the designation of a recycling coordinator to administer the program;*

iii) *shall be designed to recycle, by the end of the third and fifth years of the program respectively, 15% and 25% of the municipal waste generated, in the county,* or municipal joint action agency, *subject to the existence of a viable market for the recycled material, based on measurements of recycling and waste generated in terms of weight. The determination of recycling rate shall not include: discarded motor vehicles, wastes used for clean fill or erosion control, or commercial, institutional, or industrial machinery or equipment;*

iv) *may provide for the construction and operation of one or more recycling centers by a unit of local government, or for contracting with other public or private entities for the operation of recycling centers;*

v) *May require residents of the county* or municipal joint action agency *to separate recyclable materials at the time of disposal or trash pick-up;*

vi) *may make special provision for commercial and institutional establishments that implement their own specialized recycling programs, provided that such establishments annually provide written documentation to the county* or municipal joint action agency *of the total number of tons of material recycled;*

vii) *shall provide for separate collection and composting of leaves;*

viii) *shall include public education and notification programs to foster understanding of and encourage compliance with the recycling program;*

ix) *shall include provisions for compliance, including incentives and penalties;*

x) *shall include provisions for recycling the collected materials, identifying potential markets for at least 3 recyclable materials and promoting the use of products made from recovered or recycled materials among businesses, newspapers, and local governments in the county* or municipal joint action agency; and

xi) *may provide for the payment of recycling diversion*

credits to public and private parties engaged in recycling activities (Section 6 of the SWPRA).

l) *Any other information that the Agency may require.* (Section 4 of the SWPRA).

3) The facilities, projects, and programs included in the adopted municipal waste management plan, for which funding is requested. These shall include:

A) The facility, project, or program type;

B) The methods to be used to achieve significant increases in waste reduction or recycling;

C) The methods and tasks to be used in facility, project, or program implementation planning;

D) The area to be serviced by the facility, project or program;

E) The responsible unit of local government; and

F) The proposed owner and operator of the facility, project, or program.

4) The tasks to be completed under the grant. This information shall be specific to the selected facility, project or program. Unless it can be demonstrated to the Agency's satisfaction that these activities are not applicable, these categories shall include, but shall not be limited to:

A) For waste reduction (including, but not limited to, source reduction, recycling, composting, and shredding or compaction of municipal waste):

i) Waste characterization studies;

ii) Waste stream audits;

iii) Waste reduction studies;

iv) Environmental assessments; and

v) Economic impact analysis.

B) For transfer station facilities:

i) Waste characterization studies;

ii) Computer modeling or simulations for air and noise emmissions, and waste collection routings;

iii) Economic impact analysis; and

iv) Environmental assessments.

C) For combustion facilities:

i) Computer modeling or simulations for air and noise emissions;

ii) Economic impact analysis;

iii) Environmental assessments; and

iv) Waste characterization studies.

D) For landfill facilities:

i) Soil sampling, including test borings and soil testing;

ii) Computer modeling or simulations for groundwater flow, waste collection routings, air emissions, and surface water impacts;

iii) Engineering and architectural drawings and plans;

iv) Requests for qualifications and requests for proposals;

v) Environmental assessments; and

vi) Economic impact analysis.

5) The work program to be carried out under the grant. The work program must specify:

A) Number of months and/or work years needed for each program element;

B) Total cost for each program element;

C) The outputs committed to under each program element;

D) A schedule for accomplishment of outputs and the tasks to be accomplished to meet the outputs; and

E) Identification of a licensed professional engineer registered in the State of Illinois who will be responsible for reviewing the appropriate outputs.

6) Cost justifications for the amount requested including a budget submitted on forms prescribed and provided by the Agency for the expenses to be incurred.

With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all costs must be directly identified as grant-related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant.

7) The budget, which shall be submitted to the Agency on forms prescribed and provided by the Agency, shall include at a minimum:

A) Demonstration through an ordinance or resolution of the source of funds for the local share.

B) Direct labor costs, which shall be itemized as follows:

i) Direct personnel;

ii) In-kind contributions; and

iii) Fringe benefits.

C) Indirect costs, as defined and described in 35 Ill. Adm. Code 871.Appendix B.

D) Other direct costs, which shall include:

i) Travel;

ii) Equipment;

iii) Supplies;

iv) Postage;

v) Advertising;

vi) Computer charges;

vii) Telecommunications;

viii) Office lease and utility costs;

ix) Vehicle charges;

x) Printing; and

xi) Training and conference registration.

E) Subagreements.

F) Total estimated cost.

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G) Source of funds by budget category.
H) Allocation of funds by State fiscal year.
I) Local contributions.

8) Items that are not eligible for a Municipal Waste Implementation Planning Grant shall include, but not be limited to, land purchase, purchase or lease of construction machinery, building materials or building legal fees, or lawsuit settlements.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.205 Agency Action on Application

Within 90 days of receipt, ~~The~~ the Agency ~~will~~ shall review each ~~complete~~ application~~,~~ and may ~~will~~ approve~~,--conditionally--approve,--or--disapprove--it within--90--days--of--receipt.~~ each complete, acceptable application that meets all criteria and requirements pursuant to Section 870.204 of this Part, or disapprove each application that does not meet all criteria and requirements pursuant to Section 870.204 of this Part.~~ When funds are available, the Agency will award assistance ~~based--on--an~~ to approved ~~or-conditionally-approved application~~ applications. ~~For-an-award-made-after-the-beginning-of-the-approved planning-activity,-the-Agency-will-reimburse-the-applicant-for-allowable--costs incurred--from-the-beginning-of-the-planning-activity,-provided-that-such-costs are-contained--in--the--approved--application--and--that--the--application--was submitted-before-the-commencement-of-the-planning-activity.~~

a) Approval. Within 90 days of receipt of a complete, acceptable application that meets all criteria and requirements of Section 870.204 of this Part, the Agency shall submit written approval of the application to the applicant. The application shall not be deemed automatically approved if the Agency fails to notify the applicant of approval or disapproval within 90 days of receipt The Agency will approve the application only if it satisfies the terms, conditions, and limitations of ~~this--Subpart,~~ Section 870.204 and relevant statutes and program regulations; and if achievement of the proposed outputs is feasible, considering the applicant's existing problems, past performance under previous grants, program authority, organization, availability of local share resources, and proposed methodologies for accomplishing outputs.

~~b) Conditional---approval.---The--Agency--may--conditionally--approve--an application--which--otherwise--satisfies--the--requirements--of---this Section,--after--consulting--with--the--applicant,-if-only-changes-not substantially-affecting-program-outputs---methodologies-are--required or--if--the--applicant--has--requested--that--procedural-conditions-be imposed-so-as-to-facilitate-the-applicant's-own--review--and--approval process.---The--Agency--will-include-in-the-award-the-conditions-which the-applicant-must-meet-to-secure-final-approval-and-the-date-by-which those-conditions-must-be-met.~~

~~c)~~b) Disapproval. For applications that are not approved, the Agency's review shall include written comments necessary to revise the application to develop a complete, acceptable application that meets all criteria and requirements pursuant to Section 870.204 of this Part. If the application cannot be approved ~~or-conditionally-approved~~, the Agency will negotiate with the applicant to change the output commitments, to reduce the assistance amount, or to make any other changes necessary for approval. If negotiation fails, the Agency will disapprove the application in writing.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.206 Grant Award and Acceptance

a) Where the Agency has approved ~~or--conditionally--approved~~ an application, the Agency shall so notify the applicant in writing. The grant award notification shall include the following:
   1) All conditions of the grant, including:
      ~~A)~~ ~~Conditions-of-approval-imposed-under-Section-870.205(b),~~
      BA) Criteria and procedures for determining allowable costs;
      ~~C~~B) The proportion of allowable costs ~~for-which~~ that the ~~state~~ State will pay under the grant (the "~~state~~ State share");
      BC) The grant payment schedule;
      BD) Requirements applicable to access, auditing, reporting and records; and
      ~~P~~E) Requirements applicable to ~~subagreements~~ contractors and ~~employees-of~~ the grantee.
   2) Grounds and procedures for action by the Agency in the event of noncompliance with these rules or any grant conditions.

b) Within 30 days of receipt of a grant award notification under this ~~section~~ Section, the grantee shall notify the Agency in writing of its acceptance by submitting the grant agreement with appropriate signatures to the Agency. Failure to ~~timely~~ submit the notice of acceptance required by the grant offer during this period may result in:
   1) Withholding of the grant award;
   2) Termination of the grant award; or
   3) Such other action as the Agency may be authorized to take.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.207 ~~Evaluation-of-Performance~~ Grantee Responsibilities

The recipient of a Phase I, Phase II, or a Phase I and II grant shall develop draft and final documents in accordance with the approved grant agreement's budget, scope of work, and schedule. Grantees shall submit draft sections of their documents and reports to the Agency for review and comment. Agency input

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shall be provided in response to these draft sections in a timely manner, not to exceed 90 days from receipt of outputs. The Agency shall make recommendations on the draft and final documents to ensure compliance with provisions of the grant award, and to ensure production of a high-quality document. Grantees shall make revisions in response to Agency recommendations in a timely manner, not to exceed 90 days from receipt of Agency comments. Failure to develop and submit draft and final documents in accordance with the approved grant agreement's budget, scope of work, and schedule may subject the grantee to the noncompliance provisions in Section 870.210 of this Part.

a) ~~The Agency will oversee each recipient's performance under an accepted SWP grant. The Agency will evaluate recipient performance progress toward completing the outputs in the approved work program according to the schedule. If the evaluation reveals that the recipient is not achieving one or more of the conditions of the SWP grant, the Agency will attempt to resolve the situation through negotiation. If agreement is not reached, the Agency may impose any of the sanctions in Section 870.210.~~ Grantees shall collect and compile data as required by Section 870.204(b)(3) of this Part. Data collection methods shall be the most statistically accurate and economical within the scope of the grant award, and may include, but not be limited to, surveys, literature reviews, waste characterization studies, and weighing and sorting projects. Grantees shall make good faith efforts to collect and compile the most accurate and comprehensive data possible. Grantees are responsible for the reliability and verification of data presented in their documents.

b) ~~The grant recipient of a Phase I or Phase II SWP Grant shall notify the Agency in writing when it has completed 50 percent of the work to be performed under the grant agreement. Upon receipt of the notification, the Agency shall schedule a meeting with the applicant to discuss the progress in meeting the requirements of the grant agreement and to determine whether the applicant will timely meet the requirements of the grant agreement.~~ Grantees shall develop projections for data as required by Section 870.204(b)(4) of this Part. Information used to develop these projections shall include municipal waste generation data on a per capita basis, and population and employment data. Any assumptions used to develop these projections shall be included, and a single projection shall be selected for the required information.

c) ~~Under Phase I or Phase II SWP Grants a final report will be sent to the Agency in a finished and printed form, with five copies, by the date set forth in the grant agreement. Each Phase I final report shall provide the information obtained, as specified in Section 870.204(b). Each Phase II final report shall provide the information obtained as specified in Section 870.204(c), including all conclusions, recommendations and demonstrations called for under the approved application.~~ Grantees shall develop final documents for Phase I, Phase II, Phase I and II or Phase III MWP grants. These shall adequately address the applicable requirements of subsections 870.204(b), (c) or (d) of this Part, the Solid Waste Planning and Recycling Act, the Local Solid Waste Disposal Act, and any other applicable legislation. The Agency will approve final documents, and make final payments only after the requirements of subsections 870.204(b), (c) or (d) of this Part, as applicable, have been addressed to the Agency's satisfaction, and revisions have been made in response to the Agency's comments.

d) Upon receipt of the grant, grantees shall identify a project manager to oversee the administration of the grant. The project manager shall be an employee of the grantee, and may not be a contractor hired by the grantee. The project manager shall act as the primary contact between the grantee and the Agency, and shall have direct responsibility for project administration and completion. In the case of a multi-county regional planning grant, the counties shall designate a project manager to administer the grant on their behalf. This project manager shall maintain regular correspondence with each county, and act as the liaison between the grantee and the Agency. The grantee shall notify the Agency in a timely manner of any changes in the project manager's status relative to the project.

Project managers shall oversee contractors hired by the grantee to complete the project. Project managers shall submit correspondence, reports and drafts, and requests for payment and subcontractor progress reports to the Agency on behalf of the grantee as well as any other materials required by the Agency, during the course of the project.

e) Grantees shall submit outputs committed to under each program element in accordance with the schedule presented in the grant agreement. The Agency may issue no-cost time extensions to grantees to allow for further time to complete the requirements of the grant agreement. Extensions shall not exceed one calendar year from the scheduled completion date in the original grant agreement. These shall be approved only if each of the following is met:

1) Agency evaluation of the grantee's performance and progress toward completing the outputs in the approved work program indicates that a good faith effort has been made;

2) The grantee has submitted outputs on a quarterly basis, or in accordance with the schedule in the approved grant agreement;

3) The grantee has submitted requests for payment and progress reports in accordance with the schedule included in the grant

agreement; and

4) The grantee submits a revised schedule for completing the remaining requirements of their grant agreement.

f) The Agency will oversee each grantee's performance under the grant agreement. The Agency will evaluate grantee performance and progress toward completing the outputs in the approved work program according to the schedule in the grant agreement. The grantee shall submit outputs to the Agency on a quarterly basis, or in accordance with the schedule in the approved grant agreement. The Agency will review grantee outputs for compliance with the grant agreement, and provide comments to the grantee in a timely manner, not to exceed 90 days from receipt of the outputs. Grantees shall make revisions to draft documents in accordance with Agency comments before preparation of the final documents. If the evaluation reveals that the recipient is not achieving the conditions of the grant agreement to the Agency's satisfaction, the Agency will attempt to resolve the situation through negotiations. If agreement is not reached, the Agency may impose sanctions as set forth in Section 870.210 of this Part.

g) Each Phase I, Phase II, Phase I and II or Phase III MWP grantee shall notify the Agency in writing when it has completed 50 percent of the work to be performed under the grant agreement. Upon receipt of the notification, the Agency shall schedule a meeting with the grantee to discuss the progress in meeting the requirements of the grant agreement and to determine whether the grantee will meet the requirements of the grant agreement in a timely manner.

h) Under Phase I, Phase II, or Phase I and II MWP Grants final documents will be sent to the Agency in a finished and printed form, with five copies, by the date set forth in the grant agreement. Each Phase I final report shall provide the information obtained, as specified in subsection 870.204(b) of this Part. Each Phase II final report shall provide the information required as specified in subsection 870.204(c) of this Part, including all conclusions, recommendations and demonstrations called for under the approved application. The Agency will review Phase I and Phase II documents and make appropriate recommendations to ensure these meet the requirements of the grant agreement.

i) Appropriate and relevant Phase III outputs, as defined in the grant agreement, shall be submitted to the Agency in accordance with the schedule in the grant agreement. The Agency will review Phase III documents and make appropriate recommendations to ensure these meet the requirements of the grant agreement. All design work related to facilities needing permits shall be prepared by, or under the supervision of, a Licensed Professional Engineer. The Licensed

Professional Engineer shall affix the engineer's name, date of preparation, registration number, a statement attesting to the accuracy of the information and design, and a professional seal to all designs.

(Source: Section repealed, new Section added at 19 Ill. Reg. _____, effective _____)

Section 870.208 Supplemental SWP Grants (Repealed)

~~A recipient of a SWP grant shall be eligible for a supplemental grant not to exceed the state share of eligible project costs. The issuance of a supplemental grant will be based on the availability of funding. In no event may supplemental grant assistance under this Section result in aggregate financial assistance under this Subpart to any recipient in excess of $500,000.~~

(Source: Repealed at 19 Ill. Reg. _____, effective _____)

Section 870.209 Grant Payment Schedule

a) Requests for partial or final payment shall be sent by the grantee to the Agency and shall demonstrate the performance of work in accordance with the terms of the grant agreement. Requests shall be made according to the grant payment schedule. The Agency shall not make payment for requests for payment that are submitted by a grantee more than 12 months after the eligible grant expenses have been incurred. In addition, grantees shall submit grantee progress reports, on forms prescribed and provided by the Agency, in accordance with the grant agreement.

b) With the exception of indirect costs (as defined in Section 871.Appendix B of this Part) all grant costs must be directly identified as grant-related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant, and submitted on forms prescribed and provided by the Agency, in accordance with the Agency's instructions. Accurate documentation must be submitted by the grantee with the request for payment in accordance with the payment schedule in the grant agreement. If accurate documentation for all grant expenses cannot be provided by the grantee, reimbursement shall not be made.

~~b~~c) The grantee shall be paid the ~~state~~ State share of allowable costs incurred within the scope of an approved project not to exceed the total grant, subject to the limitations of the conditions of the grant. Such payments must be in accordance with the payment schedule and the grant amount set forth in the grant ~~award notification or any amendments thereto~~ agreement. Where the Agency has issued a Phase I + and II ~~SWP~~ MWP Grant, the Agency will not make payment for Phase II work items until ~~corresponding~~ all Phase I work items have been

completed in accordance with the terms of the grant agreement.

1) Requests for payment
The grantee ~~may~~ shall submit requests for payments and progress reports to the Agency for allowable costs incurred in accordance with the payment schedule set forth in the grant agreement. ~~Upon receipt of a request for payment, subject to the limitations set forth in the conditions of the grant, the Agency shall cause to be disbursed from available appropriated funds such amounts as are necessary so that the total amount of state payments to the grantee for the project is equal to the state share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment.~~ The grantee shall include an accounting of all eligible grant expenses to the Agency with the requests for payment. Subject to the availability of appropriated funding, the Agency shall cause payment to be disbursed to the grantee upon receipt of accurate documentation with the request for payment. Such funds shall be disbursed so that the total amount of State payments made to the grantee for the project is equal to the State share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request for payment. Failure to submit requests for payments and progress reports in accordance with the payment schedule set forth in the grant agreement may subject the grantee to the noncompliance provisions of Section 870.210 of this Part.

2) Adjustment
At any time or times prior to final payment under the grant, the Agency may cause any request(s) for payment to be reviewed or audited by the Agency. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit not to constitute allowable costs. Any payment will be reduced for overpayments or increased for underpayments on preceding requests for payment.

3) Refunds, rebates, credits, etc.
The ~~state~~ State share of any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable to costs for which the grantee has been paid under a grant, must be paid to the State of Illinois Solid Waste Management Fund. Reasonable expenses incurred by the grantee for the purposes of securing such refunds, rebates, credits, or other amounts shall be allowable costs under the grant.

4) Final payment
The Agency will retain ten percent of all documented costs and will not issue payment for the retained amount until compliance with all applicable requirements of the grant has been

demonstrated by the grantee. Upon compliance by the grantee with all applicable requirements of the grant, the Agency shall cause to be disbursed to the grantee any balance of approved allowable project ~~cost~~ costs which has not been paid to the grantee. Prior to final payment under the grant, the grantee must execute and deliver an unconditional assignment to the Agency, ~~in form satisfactory to~~ on forms prescribed and provided by the Agency, of the ~~state~~ State share of refunds, rebates, credits or other amounts (including any interest thereon) properly allocable to costs for which the grantee has been paid by the State under the grant, and a release discharging the State of Illinois, its officers, agents, and employees from all liabilities, obligations, and claims arising out of the project work or under the grant. Exceptions to such release shall be allowed only where the grantee is powerless as a matter of law, or precluded by litigation, from conveying such an unconditional release.

5) Schedule of payment
Payments for eligible grant expenses will be paid by the Agency in accordance with the payment schedule set forth in the grant agreement, subject to appropriation of funds by the Illinois General Assembly. Failure to submit requests for payment and grantee progress reports in accordance with the schedule in the grant agreement may subject the grantee to the noncompliance provisions in Section 870.210 of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.210 Noncompliance with Grant Conditions

a) In addition to such other remedies as may be provided by law, in the event of noncompliance with any condition imposed pursuant to a ~~SWP~~ MWP grant~~:~~ ~~the grant may be annulled and all grant funds recovered, or~~
   1) The grant may be annulled and all grant funds recovered;
   2~~1~~) The grant may be terminated; ~~or~~
   3~~2~~) The project work may be suspended; ~~or~~
   4~~3~~) An injunction may be entered by an appropriate court; or
   5~~4~~) Such other action ~~may be taken by~~ as the Agency ~~as the~~may be authorized ~~Director shall determine~~ to take.

b) No action shall be taken under this Section without prior consultation with the ~~applicant~~ grantee.

c) Recovery actions taken under this Section shall be pursuant to the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. ~~1989~~ 1991, ch. 127, par. 2301 et seq.) [30 ILCS 705].

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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Section 870.211 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, save harmless and defend the State of Illinois and the Agency from all claims for any such loss, damage, injury or death whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise consistent with the provisions of "AN ACT in relation to indemnity in certain contracts" (Ill. Rev. Stat. ~~1989~~1991, ch. 29, pars. 61 et seq.) [740 ILCS 53]. The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of such contract or satisfaction of any and all claims arising thereunder.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.212 Guidance for Planning (Repealed)

~~*Guidelines--developed--by--the--Agency,--in--cooperation--with--the-Department-of Natural-Resources,-for-plans-governed-by-this-Subpart-shall-be-provided-by--the Agency--to--every--unit--of-local-government-which-has-applied-for-and-received assistance-under-this-Subpart.* (Section-22.15(g)-of-the-Act).~~

(Source: Repealed at 19 Ill. Reg. _____, effective _____)

SUBPART C: NONHAZARDOUS SOLID WASTE OR MUNICIPAL WASTE ENFORCEMENT GRANTS

Section 870.301 Grant Assistance Availability

a) Subject to the availability of funding and the limitation and requirements set forth in this Part, grant assistance is available to units of local government ~~which~~ that have entered into written delegation agreements with the Agency pursuant to Section 4(r) of the Act under which the Agency has delegated all or portions of its inspecting, investigating and enforcement functions at nonhazardous solid waste or municipal waste disposal sites.

~~b) The-State-share-for-total-eligible-costs-for--SMWE--Grants--shall--not exceed-70-percent.~~

~~c) SMWE--Grants--shall--be--issued--with--budget--periods--which-shall-be concurrent-with-the-state-fiscal-year.--SMWE-Grants-may-be- issued--in subsequent--fiscal--years--subject--to--funding--availability--and-the requirements-of-this-Part.~~

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(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.302 Assistance Amount

a) In determining the amount of assistance to an applicant, the Agency will evaluate the extent to which the applicant's work program is demonstrated to be necessary and appropriate and the anticipated cost of the applicant's program is proportionate to the proposed outputs.

b) If the Agency's evaluation of the applicant's work program indicates that the proposed outputs do not justify the level of funding requested, the Agency will reduce the assistance amount.

c) No ~~SWE~~ SMWE grant issued under this Subpart may provide financial assistance in excess of $100,000.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.303 Required Content of Applications for-SWE SMWE Grants

a) ~~SWE-~~SMWE Grants will not be awarded unless complete, acceptable applications are ~~filed~~ submitted in accordance with the requirements of this Section. Forms and instructions for applying for grant funding will be made available to all eligible units of local government by the Agency.

b) ~~An-~~A complete, acceptable application for a ~~SWE~~ SMWE Grant shall address the following:

1) The geographic area to be encompassed by the grant.

~~2) The--work--program--to--be-carried-out-under-the-grant.--The-work program-must-specify:~~

~~A) work-years-needed-for-each-program-element;~~

~~B) the--outputs--committed--to--under--each--program---element, including-outputs-required-under-the-delegation-agreement;~~

~~C) a--schedule--for-accomplishments-of-outputs-and-the-tasks-to be-accomplished-to-meet-the-outputs;-and~~

~~D) identification-of-the-unit-of-local--government--responsible for-each-of-the-elements-and-outputs.~~

2) The status of a written delegation agreement pursuant to Section 4(r) of the Act.

A) Applicants with a current delegation agreement shall provide the following;

i) The level of resources to which the applicant is currently committed;

ii) The current annual number of inspections being conducted; and

iii) A description of the applicant's capabilities to conduct the local enforcement program, along with a discussion of the process to be used to implement

administrative citation authority.

B) Applicants with no delegation agreement shall initiate a discussion of negotiation for a delegation agreement with the Agency.

3) The work program to be carried out under the grant. The work program shall include:

A) A brief narrative on the local nonhazardous solid or municipal waste management system to be subject to the enforcement program. This shall encompass information based on the Agency's Division of Land Pollution Control, Field Operations Section data on the current annual number of inspections being conducted by the Agency or the applicant;

B) The number of currently permitted nonhazardous solid or municipal waste disposal sites to be subject to local inspection;

C) An inspection schedule including the number and frequency of activities for:

i) Permitted nonhazardous solid or municipal waste landfills and transfer stations;

ii) Permitted landscape waste composting facilities;

iii) Closed and covered nonhazardous solid or municipal waste landfills; and

iv) Open dump investigations; including follow-up investigations.

D) A description of a training program for assigned staff, developed in conjunction with Agency staff;

E) A description of equipment requirements needed to implement the local nonhazardous solid waste or municipal waste enforcement program;

F) Coordination procedures to be used between the applicant and Agency staff related to inspection protocol and response times;

G) Establishment of open dump investigation procedures and response times;

H) Methods for assessing compliance with recordkeeping and payment procedures related to the solid waste tipping fee at permitted landfills; and

I) A description of the total number of activities to be conducted under the grant. At least 100 activities should be conducted by each full-time inspector on an annual basis. Agency staff will provide assistance in developing the local enforcement program schedule, scope of work, and budget.

~~3)~~4) Cost justifications for the amount requested including a budget, submitted on forms prescribed and provided by the Agency, for the expenses to be incurred.

With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all cost must be directly identified as grant-related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant.

The budget, which shall be submitted to the Agency on forms prescribed and provided by the Agency, shall include at a minimum:

A) Demonstration through an ordinance or resolution of the source of funds for the local share~~.~~.

B) Direct Labor costs, which shall be itemized as follows:

~~i) personal services~~

~~ii) fringe benefits~~

~~iii) travel~~

~~iv) equipment~~

~~v) contractual support~~

~~vi) supplies~~

~~vii) other direct costs~~

i) Direct personnel;

ii) In-kind contributions; and

iii) Fringe benefits.

C) Indirect costs, as defined and described in 35 Ill. Adm. Code 871.Appendix B.

D) Other Direct costs, which shall include:

i) Travel;

ii) Equipment;

iii) Supplies;

iv) Postage;

v) Advertising;

vi) Computer charges;

vii) Telecommunications;

viii) Office lease and utility costs;

ix) Vehicle charges,

x) Printing; and

xi) Training and conference registration.

E) Subagreements.

F) Total estimated cost.

G) Source of funds by budget category.

H) Allocation of funds by State fiscal year.

I) Local contributions.

~~4) A discussion of performance to date under any existing delegation agreement or grant.~~

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.304 Agency Action on Application

Within 90 days of receipt, ~~The~~ the Agency ~~shall~~ will review each ~~complete~~ application, and may ~~will~~ approve, ~~conditionally approve, or disapprove it within 90 days of receipt~~ each complete, acceptable application that meets all

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criteria and requirements pursuant to Section 870.303 of this Part, or disapprove each application that does not meet all criteria and requirements pursuant to Section 870.303 of this Part. When funds are available, the Agency will award assistance ~~based--on~~to an approved ~~or--conditionally~~ approved application. For a continuation award made after the beginning of the approved budget period, the Agency will reimburse the applicant for allowable costs incurred from the beginning of the budget period, provided that such costs are contained in the approved application and that the application was submitted before the expiration of the prior budget period applications.

a) Approval. Within 90 days of receipt of a complete, acceptable application that meets all criteria and requirements of Section 870.303 of this Part, the Agency shall submit written approval of the application to the applicant. The application shall not be deemed automatically approved if the Agency fails to notify the applicant of approval or disapproval within 90 days of receipt. The Agency will approve the application only if it satisfies the terms, conditions, and limitations of ~~this subpart~~ Section 870.303 and relevant statutes and program regulations; and if achievement of the proposed outputs is feasible, considering the applicant's existing problems, past performance under previous grants, program authority, organization, availability of local share resources, and proposed methodologies for accomplishing outputs.

~~b) Conditional approval. The Agency shall conditionally approve the application, after consulting with the applicant, if only changes not substantially affecting program outputs or methologies are required or if the applicant has requested that procedural conditions be imposed so as to facilitate the applicant's own review and approval process. The Agency will include in the award the conditions which the applicant must meet to secure final approval and the date by which those conditions must be met.~~

c)b) Disapproval. For applications that are not approved, the Agency's review shall include written comments necessary to revise the application to develop a complete, acceptable application that meets all criteria and requirements pursuant to Section 870.303 of this Part. If the application cannot be approved ~~or conditionally approved~~, the Agency will negotiate with the applicant to change the output commitments, to reduce the assistance amount, or to make any other changes necessary for approval. If negotiation fails, the Agency will disapprove the application in writing.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.305 Grant Award and Acceptance

a) When the Agency has approved ~~or conditionally approved~~ an application, the Agency shall notify the applicant in writing. The grant award notification shall include the following:

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1) All conditions of the grant, including:
   ~~A) Conditions of approval imposed under Section 870.304(b);~~
   B)A) Criteria and procedures for determining allowable costs;
   C)B) The proportion of allowable costs for which the ~~state~~ State will pay under the grant (the "~~state~~ State share");
   D)C) the grant payment schedule;
   E)D) Requirements applicable to access, auditing, reporting and records; and
   F)E) Requirements applicable to subagreements and employees of the grantee~~;~~. and
   ~~G) A report of progress to be submitted to the Agency;~~
2) Grounds and procedures for action by the Agency in the event of noncompliance with these rules or any grant conditions.

b) Within 30 days of receipt of the grant award notification under this Section, the grantee shall notify the Agency in writing of its acceptance by submitting the grant agreement, with appropriate signatures, to the Agency. Failure to ~~timely~~ submit the notice of acceptance required by the grant ~~during this period~~ may result in:
   1) Withholding of the grant award;
   2) Termination of the grant award; or
   3) Such other action as the Agency may be authorized to take.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.306 Evaluation of Performance

The Agency will oversee each recipient's performance under an ~~accepted assistance grant~~ enforcement grant. The Agency will evaluate ~~recipient~~ grantee performance and progress toward completing the outputs in the approved work program according to the schedule. If the evaluation reveals that the ~~recipient~~ grantee is not achieving one or more of the conditions of the assistance agreement, the Agency will attempt to resolve the situation through negotiation. If agreement is not reached, the Agency may impose any of the sanctions in Section 870.309 of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.307 Supplemental SMWE Grants (Repealed)

~~A recipient of a SMWE grant shall be eligible for a supplemental grant not to exceed the state share of eligible project costs. The issuance of a supplemental grant will be based on the availability of funding. In no event may supplemental grant assistance under this Section result in aggregate financial assistance under this Subpart to any recipient in excess of $100,000.~~

(Source: Repealed at 19 Ill. Reg. _____, effective

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_____)

Section 870.308 Requests for Payment Grant Payment Schedule

a) Request for partial or final payment shall be sent to the Agency and shall demonstrate the performance of work in accordance with the terms of the grant agreement. Requests shall be made according to the grant payment schedule. In addition, grantees shall submit grantee progress reports, on forms prescribed and provided by the Agency, in accordance with the grant agreement.

b) With the exception of indirect costs (as defined in 35 Ill. Adm. Code 871.Appendix B), all grant costs must be directly identified as grant related. To be directly identifiable and eligible for grant reimbursement, expenses must be documentable and traceable to the grant. Accurate documentation, on forms prescribed and provided by the Agency, must be provided by the grantee in accordance with the schedule for payment in the grant agreement for all grant expenses. If accurate documentation for all grant expenses cannot be provided by the grantee, reimbursement shall not be made.

c) The grantee shall be paid the State share of allowable costs incurred within the scope of an approved project not to exceed the total grant, subject to the limitations of the conditions of the grant. Such payments must be in accordance with the payment schedule and the grant amount set forth in the grant agreement.

1) Request for Payment
The grantee shall submit requests for payment and progress reports to the Agency for allowable costs incurred in accordance with the payment schedule set forth in the grant agreement. The grantee shall include an accounting of all eligible grant expenses to the Agency with the requests for payment. Subject to the availability of appropriated funding, the Agency shall cause payment to be disbursed to the grantee upon receipt of accurate documentation with the request for payment. Such funds shall be disbursed so that the total amount of State payments made to the grantee for the project is equal to the State share of the actual or estimated allowable project costs incurred to date, as certified by the grantee in its most recent request payment.

2) Adjustment
At any time or times prior to final payment under the grant, the Agency may cause any request(s) for payment to be reviewed or audited by the Agency. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found on the basis of such review or audit, not to constitute allowable costs. Any payment will be reduced for overpayments or increased for underpayments on preceding requests for payment.

3) Refunds, rebates, credits, etc.
The State share of any refunds, rebates credits, or other amounts

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(including any interest thereon) accruing to or received by the grantee with respect to the project, to the extent that they are properly allocable costs for which the grantee has been paid under a grant, must be paid to the State of Illinois Solid Waste Management Fund. Reasonable expenses incurred by the grantee for the purposes of securing such funds, rebates, credits, or other amounts shall be allowable costs under the grant.

4) Schedule of payment
Payments for eligible grant expenses will be paid by the Agency in accordance with the payment schedule set forth in the grant agreement subject to appropriation of funds by the Illinois General Assembly. Failure to submit requests for payment and progress reports in accordance with the schedule in the grant agreement may subject the grantee to the noncompliance provisions in Section 870.309 of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.309 Noncompliance with Grant Conditions

a) In addition to such other remedies as may be provided by law, in the event of noncompliance with any condition imposed pursuant to a ~~SWE~~ SMWE grant~~,the grant may be annulled and all grant funds recovered, or~~:

1) The grant may be annulled and all grant funds recovered;

~~1~~2) The grant may be terminated; ~~or~~

~~2~~3) The project work may be suspended; ~~or~~

~~3~~4) An injunction may be entered by an appropriate court; or

45) Such other action ~~may be taken by~~ as the Agency ~~as the Director shall~~ determine may be authorized to take.

b) No action shall be taken under this Section without prior consultation with the applicant.

c) Recovery actions taken under this Section shall be pursuant to the Illinois Grant Funds Recovery Act (Ill. Rev. Stat., ~~1989~~ 1991, ch. 127, par. 2301 et seq.) [30 ILCS 705].

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 870.310 Indemnity

The grantee shall assume the entire risk, responsibility and liability for any and all loss or damage to property owned by the grantee, the Agency or third persons, and any injury to or death of any persons (including employees of the grantee) caused by, arising out of, or occurring in connection with the execution of any work, contract or subcontract arising out of this grant, and the grantee shall indemnify, save harmless and defend the State of Illinois and

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the Agency from all claims for any such loss, damage, injury or death whether caused by the negligence of the State of Illinois, the Agency, their agents or employees or otherwise consistent with the provisions of "AN ACT in relation to indemnity in certain contracts" (Ill. Rev. Stat. ~~1989~~ 1991, ch. 29, pars. 61 et seq.) [740 ILCS 35]. The grantee shall require that any and all contractors or subcontractors engaged by the grantee shall agree in writing that they shall look solely to the grantee for performance of such contract or satisfaction of any and all claims arising thereunder.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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1) Heading of the Part: Data Collections

2) Code Citation: 77 Ill. Adm. Code 2510

3)

Section Numbers:	Proposed Action:
2510.30	Amendment
2510.40	Amendment
2510.85	New
2510.Appendix A	Amendment

4) Statutory Authority: Sections 2-3 and Section 4-2 of the Illinois Health Finance Reform Act [20 ILCS 2215/2-3 and 4-2]

5) A Complete Description of the Subjects and Issues Involved: The Illinois Health Care Cost Containment Council (IHCCCC) is mandated by law to collect key specific financial data elements from Illinois hospitals. In 1994, the Council's basic legislation was amended revising the data elements collected in keeping with current audit rules and generally accepted collections formats. These rules are designed to implement the new legislation.

6) Will this rulemaking replace any emergency rulemaking currently in effect? No.

7) Does this rulemaking contain an automatic repeal date? No.

8) Does this rulemaking contain incorporations by reference? No.

9) Are there any other proposed rulemakings pending on this Part? Yes.

10) Statement of Statewide Policy Objectives: The proposed amendments allow the Agency to carry out two of its mandated functions, namely:

-- collecting and publicizing hospital financing and cost data, and

-- studying the healthcare financing system in the State of Illinois and recommending to the General Assembly what it deems to be the most appropriate and comprehensive cost containment system for the State.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments may be submitted in writing to Britt Hagen, Deputy Executive Director, Illinois Health Care Cost Containment Council, 4500 South Sixth Street Road, Suite 215, Springfield, Illinois 62703-5118, (217) 786-7001. Written comments should be submitted no later than March 8, 1995.

12) Initial Regulatory Flexibility Analysis:

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A) Date Rule Submitted to the Business Assistance Office of the Department of Commerce and Community Affairs:

B) Type of Small Business affected: Hospitals

C) Reporting, Bookkeeping or other procedures required for compliance: The procedures required for compliance are the same as those required under current regulations. These include accounting, bookkeeping and reporting procedures. Because the new regulations will conform with generally accepted standards in the industry, the procedures required to conform should be simplified.

D) Type of professional skills necessary for compliance: The professional skills required for compliance are the same as those required by current regulations. These skills include systems design, data processing, accounting and bookkeeping. The level of skill required should not be affected by the change in regulation.

The full text of the Proposed Amendment begins on the next page:

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TITLE 77: PUBLIC HEALTH
CHAPTER XI: ILLINOIS HEALTH CARE COST CONTAINMENT COUNCIL

PART 2510
DATA COLLECTION

Section
2510.10 Purpose
2510.20 Outside Contractor
2510.30 Collection and Submission of Hospital Financial Data
2510.40 Submission of ~~Medicare~~ Medicaid Cost Reports
2510.50 Collection of Information on Uniform Billing Form
2510.55 Report of Inpatient Discharges
2510.60 Quarterly Reports
2510.70 Special Studies and Analysis
2510.80 Confidentiality
2510.85 Format of the Financial Data Report
2510.90 Hospital Review
APPENDIX A Illinois Health Care Cost Containment Council Annual Financial Data Report
APPENDIX B UB-82 Magnetic Media Record Format
APPENDIX C UB-82 Uniform Bill Data Fields
APPENDIX D UB-92 Magnetic Media Record Format
APPENDIX E UB-92 Uniform Bill Data Fields

AUTHORITY: Implementing Article IV and authorized by Section 2-3 of Article II of the Illinois Health Finance Reform Act (Ill. Rev. Stat. 1991, ch. 111 1/2, pars. 6504-1 et seq. and par. 6502-3) [20 ILCS 2215/2-3 and Art. IV].

SOURCE: Adopted and codified at 9 Ill. Reg. 12726, effective August 5, 1985; amended at 10 Ill. Reg. 18790, effective October 17, 1986; amended at 11 Ill. Reg. 1574, effective January 2, 1987; amended at 12 Ill. Reg. 6102, effective March 21, 1988; amended at 13 Ill. Reg. 334, effective December 30, 1988; amended at 14 Ill. Reg. 2078, effective January 19, 1990; amended at 16 Ill. Reg. 8980, effective June 3, 1992; emergency amendment at 16 Ill. Reg. 19210, effective November 25, 1992, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 2031, effective January 29, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 9700, effective June 10, 1993; amended at 17 Ill. Reg. 9896, effective June 10, 1993; emergency amendment at 17 Ill. Reg. 14112, effective August 10, 1993, for a maximum of 150 days; emergency expired on January 7, 1994; amended at 18 Ill. Reg. 5300, effective March 21, 1994; emergency amendment at 18 Ill. Reg. 14809, effective September 12, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16810, effective November 4, 1994; amended at 19 Ill. Reg. 1825, effective February 6, 1995; amended at 19 Ill. Reg. _____, effective _____.

Section 2510.30 Collection and Submission of Hospital Financial Data

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a) Within sixty (60) days of the effective date of this Part, each hospital under the jurisdiction of the Council shall notify the Executive Director of the Council in writing of the date its fiscal year ends. Within 60 days of the effective date of any change in the fiscal year end date for a hospital, the hospital shall inform the Council or its Agent by means of a certified letter signed by the hosital chief executive officer.

b) Hospitals shall file with the Council or its Agent the hospital specific financial information ~~in the form prescribed in subsection (d) below with the Council~~ a form prescribed by the Council using definitions set forth in Appendix A of this Part no later than one hundred twenty (120) days after the end of its fiscal year. This requirement shall be deemed satisfied if the hospital files with the Council or its Agent four consecutive quarterly reports of the current Quarterly Financial Data Set form of the Illinois Hospital and Health Systems Association during its fiscal year. The information shall be based upon audited financial statements of the appropriate corporate entity for which such statements are issued and shall be attested to by the chief executive officer of the hospital. Hospitals whose fiscal year ended after July 31, ~~1984~~ 1995, but prior to the effective date of this Part, shall file the information on the form prescribed ~~in subsection (d)~~ below within one hundred twenty (120) days after the end of its fiscal year, or within thirty (30) days of the effective date of this Part, whichever date is later. Hospitals may submit the required financial data to the Council or its Agent on a quarterly basis.

c) The hospital specific financial data collected by and furnished to the Council or designated corporation, association or entity pursuant to this Part, shall not be a public record under The Freedom of Information Act ~~(Ill. Rev. Stat. 1985, ch. 116, para. 201 et seq.)~~ [5 ILCS 140] except that total gross revenue, total deductions ~~for~~ from gross revenue and gross inpatient revenue as defined in subsection (d) below shall be released on a hospital specific basis. *All financial data collected by the Council from publicly available sources such as the HCFA Electronic Medicare Reports is releasable by the Council on a hospital specific basis when appropriate.* It is the intent of the Act and of this Part to protect the proprietary information of hospitals.

d) Hospitals shall file hospital specific financial information ~~on the prescribed form found in Appendix A and using the definitions contained therein.~~ , on the form prescribed by the Council, including all data elements set forth in Appendix A to this Part.

e) Nothing in this Part shall be construed so as to prohibit a hospital from using the services of an agent for the submission of financial data to the Council or its Agent, provided that the agent submits the data to the Council within 48 hours of receipt from the hospital, in the same form as it was submitted by the hospital. Hospitals using the services of an agent are not to be construed as complying with the provisions of the Illinois Health Finance Reform Act or the Illinois

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Administrative Code until the data are received at the Council and pass validity checks established by the Council.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 2510.40 Submission of ~~Medicare~~ Medicaid Cost Reports

a) For fiscal years or other reporting periods ending on or after the effective date of this Part, each hospital under the jurisdiction of the Council shall file with the Council:
   1) a copy of the hospital's ~~Health Care Finance Administration Medicare~~ Medicaid Cost Report ~~(HCFA Form 2552)~~ at the same time the hospital submits its ~~Medicare~~ Medicaid Cost Report to its ~~Medicare fiscal intermediary;~~ the Illinois Department of Public Aid, and
   2) a copy of any settled ~~Medicare~~ Medicaid ~~Cost Report~~ upon receipt by the hospital of a notice of program reimbursement from ~~its fiscal intermediary.~~ the Illinois Department of Public Aid.

b) Hospitals whose fiscal year ended after July 31, ~~1984,~~ 1995, but prior to the effective date of this Part, shall file its ~~Medicare~~ Medicaid Cost Report at the same time the hospital submits its ~~Medicare~~ Medicaid Cost Report to ~~its Medicare fiscal intermediary~~ the Illinois Department of Public Aid or within thirty (30) days of the effective date of this Part, whichever date is later.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 2510.85 Format of the Financial Data Report

a) The Council or its Agent shall develop and distribute on or near the fiscal year end date of record at the Council, a personal computer program which will allow hospitals to respond to questions asked by the computer program regarding the reported elements defined in this Part, as well as any other elements which hospitals or their agents volunteer to submit. The answers to these questions, entered by hospital from the personal computer keyboard, edited by the appropriate software, and recorded on a computer diskette, when returned to the Council or its Agent and satisfying validity edits, constitute compliance with applicable provisions of the Illinois Health Finance Reform Act and with the provisions of this Part for all hospitals other than those permitted to file a paper form. The diskette distributed to hospitals shall be sent by certified mail to the Chief Financial Officer of the hospital. The final report will be submitted to the Council or its Agent by mail under cover of an attestation signed by the Chief Executive Officer of the hospital. This form will be provided by the Council or its Agent in the package

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containing the diskette.

b) Hospitals which do not have personal computer equipment capable of operating under the MS, PC, or DR DOS operating systems and so attest to the Council or its Agent, will be permitted to file the financial report on a paper on the condition that the hospital submits an attestation form provided by the Council, signed by the Chief Executive Officer of the hospital and sent to the Council or its Agent. Upon receipt of such an attestation, the Council or its Agent will provide the hospital Chief Financial Officer with a paper form for completion of the report by way of certified mail.

(Source: Added at 19 Ill. Reg. _____, effective _____)

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Section 2510.APPENDIX A Illinois Health Care Cost Containment Council Annual Financial Data Report

~~Hospital:~~_____

~~City:~~_____

~~Fiscal Year End:~~_____ ~~Phone Number:~~_____

~~Person Completing Report:~~_____

~~All spaces must be completed prior to submission~~

1. ~~Total gross revenue~~ $_____
2. ~~Total deductions from gross revenue~~ $_____
   - ~~A. Medicare contractual allowances~~ $_____
   - ~~B. Medicaid contractual allowances~~ $_____
   - ~~C. Other contractual allowances~~ $_____
   - ~~D. Bad debts and charity care~~ $_____
   - ~~E. Other deductions~~ $_____

   ~~The method of computing Items 2 A-D shall be described by the hospital.~~

   ~~Use additional sheets if necessary.~~
3. ~~Gross inpatient revenue~~ $_____
4. ~~Medicare gross revenue~~ $_____
5. ~~Medicaid and medical assistance gross revenue~~ $_____
6. ~~Total discharges~~ $_____

~~ANNUAL FINANCIAL DATA REPORT~~

7. ~~Medicare discharges~~ _____
8. ~~Medicaid, medical assistance discharges~~ _____
9. ~~Other discharges~~ _____

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10. Total assets $_____

11. Total liabilities $_____

12. Total admission _____

13. Total patient days _____

14. Average length of stay _____

15. Total outpatient visits _____

16. Current ratio _____

17. Debt to equity ratio _____

18. Debt to net assets ratio _____

Attestation: I hereby attest that the above information is correct in accordance with the applicable instructions.

Chief Executive Officer:

Signature:_____Date:_____

DEFINITIONS

1) Total gross revenue - full hospital charges for all hospital patient services before considering any deductions for bad debts, charity care or contractual allowances.

2A) Medicare contractual allowances - include revenue deductions incurred in treating medicare patients.

2B) Medicaid contractual allowances - include revenue deductions incurred in treating Medicaid, Medical Assistance No Grant ("MANG") and General assistance patients.

2C) Other contractual allowances - include revenue deductions incurred other than those from Medicare, Medicaid, MANG and General Assistance patients and bad debts and charity care.

2D) Bad debts - revenue amounts deemed uncollectible primarily because of a patient's unwillingness to pay as determined after collection efforts. Charity care - revenue amounts which represent the aggregate of the accounts written off when it is determined that a patient is unable to pay.

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2E) Other deductions - all other deductions from revenue for items such as courtesy allowances, employee discounts and administrative writeoffs.

3) Gross inpatient revenue - full hospital charges to inpatients for hospital services before considering any deductions for bad debt, charity care or contractual allowances.

4) Medicare gross patient revenue - full hospital charges derived from Medicare including payments for routine and special care, ancillary and outpatient service revenue.

5) Medicaid, MANG and General Assistance gross revenue - gross revenue full hospital charges from Medicaid, MANG or General Assistance include payments for routine and special care, ancillary and outpatient service revenue.

6) Total discharges - the number of adult and pediatric inpatients discharged from the hospital during the reporting period including discharges from the routine and specialized areas of the hospital but excluding births and transfers between units.

7) Medicare discharges - the number of adult and pediatric inpatients whose principal payment source is Medicare discharged from the hospital during the reporting period including discharges from the routine and specialized areas of the hospital but excluding births and transfers between units.

8) Medicaid, MANG and General Assistance discharges - the number of adult and pediatric inpatients whose principal payment source is Medicaid, MANG or General Assistance discharged from the hospital during the reporting period including discharges from the routine and specialized areas of the hospital but excluding births and transfers between units.

9) Other discharges - the number of adult and pediatric inpatients whose principal payment source is not Medicare, Medicaid, MANG or General Assistance discharged from the hospital during the reporting period including discharges from the routine and specialized areas of the hospital but excluding births and transfers between units.

10) Total assets - total assets of the hospital.

11) Total liabilities - total liabilities of the hospital including all current and non current liabilities.

12) Total admissions - the number of adult and pediatric inpatients

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~~admitted to the hospital during the reporting period including admissions to the routine and specialized areas of the hospital but excluding births and transfers between units.~~

~~13) Total patient days a patient day is the unit of measure denoting lodging provided and services rendered to an inpatient between the census (usually at midnight) of two successive days. The day of discharge counts only when the patient was admitted the same day. For example, a patient who was admitted Wednesday afternoon and discharged Friday would have a count of two (2) patient days. Exclude newborn days from this count.~~

~~14) Average length of stay this is the average period of time that an inpatient stays in the hospital for care and is calculated by dividing the total patient days (item 13) by the total discharges (item 6).~~

~~15) Total outpatient visits a visit is defined as a patient receiving service in an outpatient area of the hospital. If a patient visits both the emergency room and an outpatient clinic on the same day, it is counted as two (2) visits.~~

~~16) Current ratio the ratio of current assets to current liabilities of the hospital.~~

~~17) Long term debt to equity ratio the ratio of long term liabilities (debt) to the hospital's fund balance.~~

~~18) Fixed asset financing ratio the ratio of long term liabilities (debt) to the hospital's net fixed assets (after depreciation).~~

At a minimum, hospitals or their agents will submit the following data elements to the Council or its agent on the electronic or hard copy instrument designated:

OPERATING REVENUES

1) Net patient service revenue - The estimated net realizable amounts from patients, third party payers and others for services rendered, including estimated retroactive adjustments under reimbursement agreements with third-party payers.
2) Other revenue - Revenue from services other than health care provided to patients, sales and services to non-patients and operations restricted contributions; including, but not limited to, the following: (i) tax appropriations that include all revenue received from local taxing bodies (e.g., city, township, county, district) which are designed for hospital operations; (ii) contributions

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(operations restricted) received from endowments, grants, etc., which are restricted and support operating expenditures of the hospital if the costs associated with them are included in operating expenses; and (iii) all other revenue generated from non-patient sources that are of an operating nature (i.e., cafeteria, parking lot, etc.) and operating gains.
3) Total operating revenue - The total of net patient service revenue and other revenue (i.e., the sum of items 1 and 2).

OPERATING EXPENSES

4) Bad debt expense - Amounts deemed uncollectible primarily because of a patient's unwillingness to pay as determined after collection efforts.
5) Total operating expenses - The sum of the following: (i) salary and wages; (ii) employee fringe benefits; (iii) professional medical fees paid to professionals for medical services; (iv) depreciation expense based on historical costs; (v) interest expense; (vi) drugs, films, solutions and medical care supplies; (vii) utility expense for fuel, water, heat, light, power and telephone service; (viii) malpractice insurance expense excluding general liability insurance or contributions to a self-insurance fund for professional liability; (ix) bad debt expense; and (x) all other operating expenses.

NON-OPERATING GAINS/LOSSES

6) Total non-operating gains - The classification of activities as non-operating depends on the individual health care provider. In general, activities generate non-operating gains to the extent that they result from a provider's peripheral or incidental transactions and from other events stemming from the environment that may be largely beyond the control of the provider and its management. Non-operating gains include, but are not limited to, the following: (i) investment income, such as funded depreciation, contributions and endowments; (ii) all contributions, gifts and bequests which are not non-restricted; and (iii) all other non-operating gains, including extraordinary gains, that are not a result of investments or contributions.
7) Total non-operating losses - All losses that are classified as non-operating to the extent that they result from a provider's peripheral or incidental transactions and from other events stemming from the environment that may be largely beyond the control of the provider and its management.

PATIENT CARE REVENUES

8) Gross inpatient revenue - Full hospital charges to inpatients for hospital services before considering any deductions for charity care or contractual allowances, including, but not limited to, the

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following: (i) revenue derived from the daily room charge for inpatient services such as room, board and nursing care in routine areas (e.g., medical, surgical, pediatrics, rehabilitative, etc.) and special care units (e.g., intensive care, coronary care, burn units, neonatal intensive care); and (ii) revenue derived from ancillary inpatient hospital services such as lab, x-ray, cardiology.

9) Gross outpatient revenue - Hospital services revenue derived from non-inpatient activities, including but not limited to, all outpatient, clinic, day surgery, day psychiatric care, emergency room care, etc.

10) Other patient care revenue - Any revenue classified as patient-related which does not belong in the above inpatient or outpatient categories (e.g., home health care, in-home Hospice care, etc.).

11) Total patient revenue - any revenue that constitutes "total gross patient revenue" as defined in item 12 below.

12) Total gross patient care revenue - The total of gross inpatient revenue, gross outpatient revenue and other patient care revenue (i.e., the sum of items 8 through 10).

13) Medicare gross revenue - Full hospital charges derived from any other source including, but not limited to, Blue Cross/Blue Shield, commercial insurance, health maintenance organizations and preferred provider organizations for routine and special care, ancillary and outpatient service before considering any deductions. This figure may be estimated.

14) Medicaid gross revenue - Full hospital charges derived from Medicaid (MAG and MANG), including routine and special care, ancillary and outpatient service revenue before considering any deductions. This figure may be estimated.

15) Total other gross revenue - Full hospital charges derived from any other source including, but not limited to, Blue Cross/Blue Shield, commercial insurance, health maintenance organizations and preferred provider organizations for routine and specialized care, ancillary and outpatient service before considering any deductions. This figure may be estimated.

DEDUCTIONS FROM REVENUE

16) Charity care - These revenue deductions represent the aggregate of the accounts written off when it is determined that a patient is unable to pay. Charity care results from the facility's policy to provide health care services free of charge to individuals who meet certain financial criteria. Do not include costs associated with community benefits or other non-patient related services.

17) Medicare allowance - Revenue deductions incurred in treating Medicare patients. This figure may be estimated.

18) Medicaid allowance - Revenue deductions incurred in treating Medicaid patients. This figure may be estimated.

19) Other contractual allowances - Revenue deductions incurred in treating

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patients covered by Blue Cross/Blue Shield plans, commercial insurance plans, HMO/PPO contracts or other revenue deductions other than charity care, Medicare allowances and Medicaid allowances. This figure may be estimated.

20) Other allowances - All other deductions from revenue for items such as courtesy allowances, employee discounts, administrative writeoffs, etc.

21) Total deductions - The sum of charity care, Medicare allowances, Medicaid allowances, other contractual allowances and other deductions(i.e., the sum of items 16 through 20.)

ASSETS

22) Operating cash and short-term investments - The total of cash on hand and in banks and (unrestricted) investments estimated to be held no longer than one year.

23) Estimated patient accounts receivable - Patient accounts receivable adjusted for allowances and bad debts.

24) Other current assets - The value of all other current assets.

25) Total current assets - The total current assets of the hospital. This amount should include the sum of operating cash and short-term investments, estimated patient accounts receivable (net of allowances and bad debts) and other current assets (i.e., the sum of items 22 through 24).

26) Total other assets - The sum of (i) the amounts included in the hospital's designated funded depreciation account; (ii) the value of property, plant, and equipment recorded on the hospital's books, (iii) any other unrestricted assets; and (iv) any restricted assets (donor or legally restricted only); less accumulated depreciation on fixed assets such as property, plant, and equipment.

27) Total assets - The sum of total current assets and total other assets (i.e., the sum of items 25 and 26).

LIABILITIES AND FUND BALANCES

28) Total current liabilities - The sum of all current liabilities using generally-accepted accounting principles as a guide including, but not limited to, the following: (i) vendor accounts payable (excluding reconciliation payments due to third party payers); (ii) current year's principal payments on long-term debt; and (iii) other current liabilities.

29) Long term debt - Debt whose anticipated maturity (liquidation) is in excess of one year (net of the current maturities).

30) Other liabilities - The value of any other non-current liabilities or deferred revenue.

31) Total liabilities - The sum of total current liabilities, long term debt and other liabilities.

32) Total liabilities and fund balances - The sum of total liabilities

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(item 31) and all fund balances (equity) of the hospital - including restricted as well as unrestricted funds.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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1) Heading of the Part: Long-Term Care Partnership Insurance

2) Code Citation: 50 Ill. Adm. Code 2018

3) Section Numbers: Proposed Action:

2018.60	Amended
2018.70	Amended
2018.80	Amended
2018.130	Amended

4) Statutory Authority: Implementing the Partnership for Long-Term Care Act [320 ILCS 35] and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/401].

5) A Complete Description of the Subjects and Issues Involved: The Department is amending this Part to address comments received from industry concerning the notice requirement. We are also clarifying the education requirements found in Section 2018.80(d) for consistency with Part 2012.

6) Will this proposed amendment replace emergency rule currently in effect? No

7) Does this amendment contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: These amendments will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

David Van Lieshout
Assistant Chief Counsel
Department of Insurance
320 West Washington
Springfield, Illinois 62767
(217) 782-0708

(or)

Denise Fuchs
Department of Insurance
320 West Washington
Springfield, Illinois 62767
(217) 782-2867
Fax (217) 524-9033

12) Initial Regulatory Flexibility Analysis: The Department has determined

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that these amendments will not affect small businesses.

The full text of the Proposed Amendment begins on the next page:

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TITLE 50: INSURANCE
CHAPTER I: DEPARTMENT OF INSURANCE
SUBCHAPTER c: ACCIDENT AND HEALTH INSURANCE

PART 2018
LONG-TERM CARE PARTNERSHIP INSURANCE

Section
2018.10 Purpose
2018.20 Applicability and Scope
2018.30 Definitions
2018.40 Policy Definitions
2018.50 Policy Practices and Provisions
2018.60 Unintentional Lapse
2018.70 Required Disclosure Provisions
2018.80 Standards for Marketing
2018.90 Minimum Benefit Standards for Qualifying Policies and Certificates
2018.100 Right to Appeal
2018.110 Required Policy and Certificate Provisions
2018.120 Reporting Requirements
2018.130 Maintaining Auditing Information
2018.140 Reporting on Asset Protection
2018.150 Preparing a Service Summary
2018.160 Plan of Action
2018.170 Auditing and Correcting Deficiencies in Insurer Recordkeeping
2018.180 Loss Ratio
2018.190 Appropriateness of Recommended Purchase
2018.200 Prohibition Against Pre-Existing Conditions and Probationary Periods in Replacement Policies or Certificates
2018.210 Standard Format Outline of Coverage Requirements
2018.220 Requirement to Deliver Shopper's Guide
2018.230 Penalties
EXHIBIT A Class of Insurance - Accident/Health
EXHIBIT B Standard Format - Outline of Coverage

AUTHORITY: Implementing the Partnership for Long-Term Care Act [320 ILCS 35] and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/401].

SOURCE: Adopted at 18 Ill. Reg 12746, effective August 9, 1994; amended at 19 Ill. Reg. _____, effective _____.

Section 2018.60 Unintentional Lapse

Each insurer offering long-term care partnership insurance shall, as a protection against unintentional lapse, comply with the following:

a) Notice before lapse or termination.

1) No individual long-term care partnership policy or certificate

shall be issued until the insurer has received from the applicant a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation shall provide space designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until ~~30~~ at least ten (10) days after a premium is due and unpaid. I elect NOT to designate any person to receive such notice." The insurer shall also notify the insured of the right to designate or change the designee, no less often than once every 2 years.

2) When the policyholder or certificateholder pays the premium for a long-term care partnership policy or certificate through a payroll or pension deduction plan, the requirements contained in subsection (a)(1) of this Section need not be met until sixty (60) days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall indicate the payment plan selected by the applicant.

3) Lapse or termination for nonpayment of premium. No individual long-term care partnership policy or certificate shall ~~lapse or~~ be terminated for nonpayment of premium unless the insurer, ~~at least thirty (30) days before the effective date of the lapse or termination~~ not less than 10 (10) days following the premium due date, has given notice to the insured and to those persons designated pursuant to subsection (a)(1) of this Section, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid~~, and notice shall not be given until thirty (30) days after a premium is due and unpaid~~. Notice shall be deemed to have been given as of five (5) days after the date of mailing.

b) In addition to the requirements of subsection (a) above, a long-term care partnership policy or certificate shall include a provision which provides for reinstatement of coverage, in the event of lapse, if

the insurer is provided proof of cognitive impairment as defined in Section 2018.30(m) of this Part and as determined by a physician. This option shall be available to the insured for no less than (5) months after termination and shall allow for the collection of past due premium.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 2018.70 Required Disclosure Provisions

a) Renewability. Individual long-term care partnership policies shall contain a renewability provision. Such provision shall be captioned as a Renewal, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and of which it may be renewed.

b) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care partnership policy, all riders or endorsements added to an individual long-term care insurance policy after issuance or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After issuance, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing and signed by the insured, with the exception of when the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

c) Pre-existing Conditions. If a long-term care partnership policy or certificate contains any limitations with respect to pre-existing conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled "Pre-existing Condition Limitations." Limitations to pre-existing conditions shall be in accordance with Section 351A-5 of the Illinois Insurance Code (Ill. Rev. Stat. 1991, ch. 73, par. 963A-5) [215 ILCS 5/351A-5].

d) Disclosure Requirements for Accelerated Life Products.

1) Policy Summary

At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care partnership benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to

complying with all applicable requirements, the summary shall also include:

A) an explanation of how the long-term care partnership benefit interacts with other components of the policy, including deductions from death benefits;

B) an illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;

C) any exclusions, reductions and limitations on long-term care partnership benefits; and

D) if applicable to the policy type, the summary shall also include:

i) disclosure of the effects of exercising other rights under the policy;

ii) disclosure of guarantees related to long-term care partnership benefit costs of insurance charges; and

iii) current and projected maximum lifetime benefits.

2) Benefit Reports

Any time a long-term care partnership benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder. Such report shall include:

A) any long-term care partnership benefits paid during the month;

B) an explanation of any changes in the policy, including changes in death benefits or cash values, due to long-term care partnership benefits being paid out; and

C) the amount of long-term care partnership benefits existing or remaining.

3) Outline of Coverage

The Outline of Coverage should include an example filled out in John Doe form which illustrates how the long-term care partnership policy benefits are calculated. Refer to Section 2012.110 and Exhibit ~~C~~ B for format and content requirements.

e) An applicant and/or policyholder shall be given a copy of an explanation of the Right to Appeal found in Section 2018.100 of this Part, during the initial visit with an insurance producer, or upon request.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 2018.80 Standards for Marketing

No long-term care partnership policy or certificate shall be advertised, solicited, or issued for delivery in this State as a long-term care partnership policy or certificate unless it has been approved by the Director.

Each insurer seeking approval of a long-term care partnership policy or certificate shall:

a) Provide the DOI with a written summary of the methods the insurer will use to alert the consumer, prior to presentation of an application for long-term care partnership insurance, of the availability of consumer information and public education provided by the Senior Health Insurance Program (SHIP) of the DOI.

b) Utilize applications to be signed by the applicant which indicate that the applicant:

1) Received a complete description of the Illinois long-term care partnership program entitled "What You Should Know About The Long-Term Care Partnership" available from any of the participating agencies, which includes an explanation of asset protection and how it is achieved. In addition to these, an address and a toll free consumer information telephone number for SHIP shall be provided, as 1-800-548-9034, located at Department of Insurance, 320 W. Washington, 4th Floor, Springfield, Illinois 62767.

2) Received a description of the insurer's long-term care partnership policy or certificate benefit option.

3) Agrees to the release of information by the insurer to the State as may be needed to evaluate the Illinois long-term care partnership program, and document a claim for Medicaid asset protection in the following format:

"CONSENT AND AUTHORIZATION
TO RELEASE INFORMATION

I hereby agree to the release of all records and information pertaining to this long-term care partnership policy or certificate by the [insert issuer name] to the State of Illinois for the purpose of documenting a claim for Asset Protection under the State Medicaid program, for evaluating the Illinois Long-Term Care Partnership Program, and for meeting Medicaid or Department of Insurance audit requirements.

I understand that the information contained in these records will be used for no purpose other than those stated above, and will be kept strictly confidential by the State of Illinois.

_____
(Signature of Applicant(s))."

4) Received a description regarding mandatory inflation protection that shall be in the following format:

"NOTICE TO APPLICANT REGARDING
MANDATORY INFLATION PROTECTION

All Long-Term Care Partnership policies provide for

automatic increases in daily coverage benefits of at least 5% per year compounded. Companies may offer greater inflation protection. Depending on the option you choose to automatically inflate daily coverage benefits, premiums may rise over the life of the policy [certificate]. [Insert insurer name] will provide you with a graphic comparison showing the differences between a policy inflating at 5% and a policy inflating at a greater percentage, over at least a twenty (20) year period."

c) Report to the DOI all sales involving replacement of existing policies and certificates by long-term care partnership policies or certificates quarterly to include:
   1) The name and address of the insured.
   2) The name of the company whose policy or certificate is being replaced.
   3) The name of the producer replacing the coverage.
   4) A comparison of the coverage issued with that being replaced, including a comparison of premiums and an explanation of how the replacement was beneficial to the insured. The replacing insurer shall not cancel, nonrenew, or rescind a replacement long-term care partnership policy or certificate for any reason other than nonpayment of premium, material misrepresentation, or fraud.

d) The insurer shall ~~Provide~~ provide producer training as follows:
   1) The insurer shall ~~Provide~~ provide written evidence to the ~~DOI~~ Department of Insurance that procedures are in place to assure that no producer will be authorized to market, sell, solicit, or otherwise contact any person for the purpose of marketing a long-term care partnership policy or certificate unless the producer has completed six (6) hours of training on traditional long-term care insurance, ~~in--general,~~ specifically titled "Traditional Long-Term Care Insurance Policy", as prescribed in Exhibit E (50 Ill. Adm. Code 2012) and complete an additional six (6) hours of training on the Illinois long-term care ~~program~~ partnership insurance as specifically titled "Long-Term Care Partnership Policy" as prescribed in Exhibit ~~B (50 Ill. Adm. Code 3119)~~ A of this Part. ~~This~~ These ~~course~~ courses cannot be included as a part of any other certified continuing education course; however these courses may satisfy a part of the continuing education requirements of Section 494.1(c) of the Illinois Insurance Code [215 ILCS 5/491.1(c)]. Insurers and producers shall maintain evidence of completion of the hours of training required and shall provide proof of completion upon request. Such ~~assurances~~ proofs of completion shall be in the ~~form~~ format ~~of a properly completed document, Exhibit B~~ prescribed by ~~(50 Ill. Adm. Code 3119)~~ .Exhibit D, and shall be signed by the producer and ~~the authorized signature for~~ the ~~Provider~~ provider of the education attesting to the ~~successful~~ completion of ~~the~~ required training ~~and submitted to the DOI~~. The course of study content requirements appearing in Exhibit A shall be satisfied. ~~Insurers and producers shall maintain evidence of completion of the hours of training required and shall provide proof of completion upon request.~~
   2) The required training hours ~~shall~~ referenced in subsection 2018.80(d)(1) above may qualify as part of the continuing education requirements of Section 494.1(c) of the Illinois Insurance Code [215 ILCS 5/494.1(c)] only if the training course has been certified under 50 Ill. Adm. Code 3119.30~~(a)~~. Each educational ~~Provider~~ provider shall submit its request for certification to the Director on a form prescribed by ~~Exhibit B (50 Ill. Adm. Code 3119.30(a))~~ Exhibit B at least 30 days prior to any course being offered. All educational ~~Providers~~ providers and training courses qualifying for continuing education credit shall be renewed on an annual basis.

e) Include a statement on the outline of coverage, the policy or certificate application, and the front page of the long-term care partnership policy or certificate in bold type and in a separate box as follows: "THIS POLICY [CERTIFICATE] IS APPROVED UNDER THE ILLINOIS LONG-TERM CARE PARTNERSHIP INSURANCE PROGRAM."

f) Long-term care insurance policies or certificates sold after July 1, 1994, that are not under the Illinois long-term care partnership program must include a statement on the outline of coverage, the policy or certificate application, and the front page of the policy or certificate in bold type and in a separate box as follows: "THIS POLICY [CERTIFICATE] IS NOT APPROVED FOR MEDICAID ASSET PROTECTION UNDER THE ILLINOIS LONG-TERM CARE PARTNERSHIP PROGRAM. HOWEVER, THIS POLICY [CERTIFICATE] IS AN APPROVED LONG-TERM CARE POLICY [CERTIFICATE] UNDER STATE INSURANCE REGULATIONS. FOR INFORMATION ABOUT POLICIES AND CERTIFICATES APPROVED UNDER THE ILLINOIS LONG-TERM CARE PARTNERSHIP PROGRAM, CALL THE SENIOR HELPLINE AT THE DEPARTMENT ON AGING AT 1-800-252-8966."

g) Provide that no long-term care partnership policy or certificate shall be sold, transferred, or otherwise ceded to another insurer without first having obtained approval from the Director.

h) Except as provided below, an insurer shall continue to make available for purchase any policy or certificate issued that has been approved by the Director. The following describes the process and result of discontinuing the availability of a policy or certificate:
   1) An insurer may discontinue the availability of a policy or certificate if the insurer provides the Director, in writing, its decision at least thirty (30) days prior to discontinuing the availability of the policy or certificate. The following shall be considered a discontinuance of the availability of a policy or certificate:
      A) The sale or other transfer of a policy or certificate to another insurer.

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B) A change in the rating structure or methodology unless the insurer complies with the following requirements:
The insurer shall provide an actuarial memorandum which contains a complete description of the current rating methodology including all assumptions underlying the current rates, and a complete description of the revised rating methodology including all assumptions underlying the rates proposed under the revised rating methodology, and actuarial justification, i.e., experience studies, general population data, etc., for each of the assumptions that are different than the corresponding assumptions underlying the current rates, and a demonstration of actuarial relationship between the current and proposed rates using the distribution of current insureds, and an identification of the rating cells, i.e., age, sex, etc., which experience the greatest change in rates due to the change in rating methodology, and a demonstration that the rates based on the new rating methodology meet the loss ratio requirements of this Part and any other relevant information. The actuarial memorandum should identify the actuary responsible for establishing the change in rating methodology and be signed by the actuary.

2) An insurer that discontinues the availability of a policy or certificate under subsection (1) above shall not file for approval of a new long-term care partnership policy or certificate for a period of five (5) years after the insurer provides notice to the Director of the discontinuance.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 2018.130 Maintaining Auditing Information

a) Every insurer shall maintain information as required by subsection (f) below, on all long-term care partnership policyholders or certificateholders who have ever received any benefit under the policy or certificate. Such information shall be updated at least quarterly. This requirement for updating shall not require the conduct of any assessment, reassessment, or other evaluation of the long-term care partnership policyholder's or certificateholder's condition which is not otherwise required

b) When a long-term care partnership policyholder or certificateholder who has received any benefit dies or lapses a long-term care partnership policy or certificate for any reason, the insurer shall retain the required information for a period of at least five (5) years after the time when the policy was in force. Unless notified by the DOI to the contrary during this period, after the expiration of

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five (5) years, the service summary provided by the insurer will be deemed to comply with all asset protection reporting, record keeping, and auditing requirements of this Part. The insurer may use microfiche, microfilm, optical storage media, or any other cost effective method of record storage as alternatives to storage of paper copies.

c) At the time the long-term care partnership policy or certificate ceases to be in force, the insurer shall notify the policyholder or certificateholder of the right to request a copy of the service records as required by subsection (f) below.

d) The insurer shall also, upon request in writing, provide such policyholder or certificateholder or the policyholder's or certificateholder's authorized designee, if any, with a copy of the insurer's service records as required by subsection (f) below which are necessary to establish the asset disregard. These records shall be provided within sixty (60) days after a request.

e) The insurer shall enclose with the records a statement advising former long-term care partnership policyholders or certificateholders that it is in their best interest to retain the records if they ever wish to establish eligibility for Medicaid.

f) The information to be maintained includes the following:

1) Evidence that the insured event has taken place. The occurrence of the insured event shall be documented by case management agency staff, as part of the initial assessment of the client or as part of a subsequent reassessment.

2) Description of services provided under the long-term care partnership policy or certificate, including the following:

A) Name, address, phone number, and professional license number, if applicable, of Provider.

B) Amount, date, and type of services provided, and whether the services qualify for asset protection.

C) Dollar amounts paid by the insurer~~, whether on an indemnity, expense incurred, or other basis~~.

D) The charges of the service providers, including copies of all invoices for services counting toward asset protection.

E) Identification of the case management agency, if applicable, and copies of all assessments and reassessments.

F) Determination of whether the long-term care partnership policyholder or certificateholder was a qualified insured at the time of benefit payment. The insurer may rely on written representation by the long-term care partnership policyholder or certificateholder as to whether he or she has had the required coverages defined in this Part.

3) In order for home and community based services to qualify for asset protection, these services shall be in accord with a Plan of Care developed by a case management agency. If the long-term care partnership policyholder or certificateholder has received

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any benefits delivered as part of a Plan of Care, the insurer shall retain the following:

A) A copy of the original Plan of Care and the Determination of Need.

B) A copy of the Plan of Care required by DoA or DORS.

C) A copy of any changes made in the Plan of Care. The Plan of Care shall document that the changes are required by changes in the client's medical situation, cognitive abilities, or the availability of social supports. Such services shall count towards asset protection after the case management agency adds the documented need for and description of the new services to the Plan of Care.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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1) Heading of the Part: The Illinois Oil and Gas Act

2) Code Citation: 62 Ill. Adm. Code 240

3)

Section Number:	Proposed Action:
240.10	Amended
240.180	Amended
240.240	Amended
240.245	New
240.250	Amended
240.300	Amended
240.310	Amended
240.400	New
240.410	Amended
240.430	Amended
240.450	Amended
240.455	New
240.460	Amended
240.465	New
240.470	Amended
240.500	Amended
240.520	Amended
240.525	New
240.530	Amended
240.540	Amended
240.630	Amended
240.700	Amended
240.750	Amended
240.760	Amended
240.795	New
240.820	Amended
240.830	Amended
240.850	Amended
240.860	Amended
240.890	Amended
240.891	New
240.895	Amended
240.930	Amended
240.940	Amended
240.950	Repealed
240.1000	New
240.1005	Repealed, New
240.1010	Repealed, New
240.1020	Repealed, New
240.1030	Repealed, New
240.1040	New
240.1050	New

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240.1060	New
240.1110	Amended
240.1130	Amended
240.1140	Amended
240.1150	Amended
240.1400	Amended
240.1410	Amended
240.1430	Amended
240.1440	Amended
240.1460	Amended
240.1480	Amended
240.1490	New
240.1500	Amended
240.1520	Amended
240.1530	Amended
240.1640	Amended
240.1700	Amended
240.1710	Amended
240.1740	Amended
240.1820	Amended

4) Statutory Authority: Implemented and authorized by Section 8 of the Illinois Oil and Gas Act. [225 ILCS 725/8]

5) A complete description of the subjects and issues involved: The proposed amendments are submitted by the Illinois Department of Mines and Minerals in order to more effectively implement the requirements of the Illinois Oil and Gas Act. The proposed amendments affect Subparts A-K and N-R currently codified within 62 Ill. Adm. Code Part 240.

Subpart A is being amended to achieve three objectives. First, five newly defined terms have been added to Section 240.10 in order to facilitate understanding of the rules. Second, the street address and post office box number of the Springfield office of the Illinois Department of Mines and Minerals, Oil and Gas Division, is deleted to accommodate the possibility of a future change of address and post office box number. Third, the status of the Department's hearing officer is clarified.

Subpart B is being amended to accomplish three objectives. First, requirements for vertical drilling deviation are clarified. Second, a new section has been added that specifies additional requirements for horizontal drilling. Third, permit revocation criteria is amended to include a permittee's failure to meet permit conditions as an element of mandatory revocation.

Subpart C is being amended to achieve two objectives. First, it is specified that the provisions of this Subpart apply to injection, disposal and commercial Class II UIC wells. Second, identification of the type of

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well for which a Class II permit is being sought is required at the time of permit application.

Subpart D is being amended to achieve ten objectives. First, a new definitional section has been added that contains two defined terms previously found elsewhere in the Subsection. Second, oil and gas well spacing requirements for drilling units have been clarified. Third, a provision has been added which exempts any well drilled into a mine void or a pillar within the mined out area from the Subpart's spacing requirements. Next, the section on directional drilling has been changed to clearly describe a directional drilled well, specifies that the locational reference of such a well for permit and drilling unit establishment purposes is at the completion point, and subjects all portions of the reservoir exposed in the well bore to the well location and spacing requirements set forth for modified units, and clearly articulates the numbering procedure for directionally drilled wells. Fifth, Section 240.455, Horizontal Drilling, is newly added to clarify drilling, permitting and spacing rules for horizontal drilling of oil or gas production wells. Sixth, the Modified Drilling Unit section has been amended to precisely indicate that a hearing held pursuant to this section would be for the consideration of a drilling units' location and well density. Seventh, several changes are made to enhance the grammatical consistency of Section 240.460, and the section is amended to clearly where a petition to modify a drilling unit or to establish a special drilling unit is to be filed. Eighth, current address of the street address and post office box number of the Springfield office of the Illinois Department of Mines and Minerals, Oil and Gas Division, is deleted to accommodate the possibility of a future change of address and post office box number. Next, Section 240.465, Special Drilling Unit, has been newly added to clearly articulate that any person having an interest in oil or gas in a lease or drilling unit may apply to the Department for a hearing to consider the establishment of a special drilling unit for certain spacing or horizontal drilling purposes, and makes the processing of applications to establish a special drilling unit based on directional drilling subject to the spacing provisions contained in Section 240.455, Horizontal Drilling. Finally, certain clerical errors in geographical designations are corrected.

Subpart E is being amended to accomplish six objectives. First, Section 240.500, Definitions, is amended to more clearly define "drilling fluid", and definitions for "oil drilling fluid" and "saltwater drilling fluid" have been added. Second, it is clarified that sediment pits are used for drill cuttings and circulation pits are used for drilling fluids, and that the discharge of drilling fluids from the pits into any surface water or water drainage way is prohibited. Third, Section 240.525, Saltwater or Oil Based Drilling Fluid Handling and Storage, has been newly added to, require permittees drilling with saltwater or oil drilling fluids to provide at least one lined sediment pit or above ground, portable

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container for depositing drill cuttings and one lined drilling fluid circulation pit or leak free, above ground container, clearly establish that sediment pits and circulation pits are to be lined with a liner of at least 20 mil thickness with specified performance and maintenance requirements sufficient to reasonably prevent overflow during completion activities and prior to beginning pit restoration activities, and restricts the use of such pits to the temporary storage of drill cuttings and drilling fluids, with an express prohibition against their use for the disposal of general oilfield wastes. Fourth, workover pits are expressly made subject to the same requirements established for completion pits. Next, this Subpart is amended to clearly articulate acceptable methods of disposing of saltwater or oil drilling fluid wastes and pit liners. Lastly, it is clarified that the time period for filling and leveling drilling pits used as completion pits is six months after the cessation of completion activities, and the period for filling newly constructed completion pits is specified to be ninety days after completion activities cease.

Subpart F is being amended to specify that the well itself, as well as the wellhead is required to be maintained in a leak-free condition.

Subpart G is being amended to accomplish five objectives. First, this Subpart is amended to clearly state that the provisions hereunder apply to all Class II UIC wells, including commercial saltwater disposal wells. Second, a definition of "commercial saltwater disposal well facility" has been added. Third, the definition of "Class II fluids" has been removed from this Subpart and placed in Section 240.10 to facilitate Section-wide applicability of this term. Fourth, the procedure for establishing internal mechanical integrity has been modified to permit the specification of an alternate packer setting depth if the packer cannot be set at the standardized depths due to existing well construction or an obstruction in the well, and clearly directs the Department to consider current well construction, freshwater depth and the nature of the obstruction when determining an alternate packer depth. Next, the Subpart is amended to clarify that an approved temporary abandonment serves to suspend the five year internal mechanical integrity testing requirement. Sixth, Section 240.795, Commercial Saltwater Disposal Well, has been newly added to establish a clear guideline for the operational aspects of commercial saltwater disposal wells and facilities to, restrict the utilization of commercial saltwater disposal wells or storage at Commercial Saltwater Disposal facilities to Class II fluids, clearly establish that all Class II fluids stored at a commercial Saltwater Disposal Well facility be stored in either leak free steel or fiberglass tanks or concrete storage structures which meet specified construction standards, require the permittee of the Commercial Saltwater Disposal Well or a permitted liquid oilfield waste transporter to be present when Class II fluids are delivered to the facility, require restricted access and perimeter fencing of at least four feet in height to surround all

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Commercial Saltwater Disposal Well facilities, require such facilities to be locked from 11:00 p.m. to 5:00 a.m, implements a permittee record keeping system whereby the permittee is required to maintain for three years and make available upon request a record of persons from whom Class II fluids are delivered, the date and number of barrels delivered, the name and location of the lease from which the fluids were produced and information on the Liquid Oilfield Waste Hauler making the delivery, and authorizes the Department to sample and analyze the Class II fluids from the facility for certain clearly defined parameters.

Subpart H is being amended to accomplish fourteen objectives. First, it is clarified that all oil and/or natural gas production flowlines constructed after November 8, 1993 must be buried at least thirty-six inches underground. Second the Subpart is amended to clearly state that all power lines installed after November 8, 1993 are required to be elevated a maximum of eighteen feet above ground surface and expands the authority of the Department to enforce the requirement that power lines be elevated a minimum of fourteen feet above ground surface if such powerlines constitute a hazard to public safety. Third, the amended rules clearly state their applicability to all concrete storage structures existing on July 1, 1995 which will continue to be used and to all new concrete storage structures constructed after May 13, 1994. Next, two new definitions are added to clearly define "new concrete storage structure" and existing concrete storage structure". Fifth, permitting requirements for new and existing concrete storage structures are clearly articulated. Sixth, location and construction requirements for new and existing concrete storage structures have been modified to, implement location restrictions for new concrete storage structures, require existing concrete storage to be completely fenced if located within 200 feet of an existing inhabited structure when permitted, establish construction standards for new concrete storage structures and subject the structures to inspection and corrective measures prior to use, clearly state that existing concrete storage structures shall have been constructed in accordance with standard engineering practices using formed concrete bottoms and sides, exempts existing concrete structures from under structure drainage provisions pertaining to new structures while subjecting them to the same inspection and repair rules, and prohibits installation of any type of drainage system which penetrates the sides or bottom of any structure. Seventh, clarifies that before removal and or burial of the concrete storage structure all, rather than only the free liquid fraction, of the free liquid oilfield waste is to be removed and disposed of. Eighth, it is clearly stated that for new and existing concrete storage structures permitted in accordance with this Subpart and restored after July 1, 1995 the pit residue can be disposed of at an IEPA permitted non-hazardous special waste landfill except that such structures with residue containing NORM may be required to be disposed of at a IDNS permitted waste facility. Ninth, this Subpart is amended to permit pit residue from existing concrete storage structures not permitted for

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continued use by July 1, 1995 and required to be restored, or from permitted existing pits restored by such date to be buried on site within the concrete structure. Next, Department inspection authority is extended to include existing concrete storage structures. Eleventh, Section 240.890, Crude Oil Spill Clean-Up Requirements is amended to clarify that the effective date of the rule is November 8, 1993. Twelfth, a clerical correction is made to insert a correct Section reference. Next, acceptable types of remedial cleanup measures are specified, and it is clearly indicated how the Department will determine whether additional remedial cleanup action will be ordered. Thirteenth, Section 240.891, Crude Oil Spill Waste Disposal, is newly added. This Section contains virtually all of Section 240.950, which has been repealed, but has been renamed and has rearranged certain subsections to facilitate clarity and understanding. Lastly, the Subpart has been amended to clearly indicate that the effective date of Section 240.895, Produced Water Spill Clean-up requirements is November 8, 1993, and that remedial cleanup action may include the addition of organic matter, with chloride content of the spill material deleted as a consideration factor by the Department in determining whether additional remedial cleanup action will be ordered, replaced by public safety considerations.

Subpart I is being amended to accomplish three objectives. First the title is amended to delete reference to "Waste and Spill Related", as these activities are addressed elsewhere in the rules. Next, it is clarified that crude oil bottom sediments can be transported to and IEPA licensed special waste landfill or to an IEPA licensed land off-site treatment facility, or bioremediated on-site through land spreading and chemical treatment under an IEPA waste disposal permit. Third, Section 240.950, Crude Oil Spill Waste Disposal, is repealed in its entirety and recodified at Section 240.891.

Subpart J is being amended to accomplish eight objectives. First, Section 240.1000, Definitions, has been newly added to provide a clear definition of "vacuum". Second, the current title and provisions of Section 240.1005 , Requirements for Use of Vacuum Pumps, are repealed and replaced under the title "Applicability", in the same section with new rules which clearly state that these provisions apply to vacuum pumps or other devices used on oil and gas production wells for creating a vacuum in any oil or gas well, and establishes a six month permitting requirement for wells with vacuum pumps existing when these rules are adopted. Third, the title and current provisions of Section 240.1010, Application for Use of Vacuum, are repealed and replaced under the title "Application for Vacuum Permit", in the same section with new rules which expressly, prohibit the use of a vacuum device on any oil and or gas production well without a permit, provide that a permit application is to be made on prescribed forms and executed under penalties of perjury, imposes upon the Department to provide written notification to the applicant of any application deficiencies and establishes a sixty day period following the date of

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notification for any stated deficiencies to be corrected or the application will be deemed denied. Fourth, the current title and provisions of Section 240.1020, Notice and Hearing on Application, are repealed and replaced under the title "Contents for Application", in the same section with new rules that clearly articulate the required information which the application for a permit to use a vacuum device on a production well must include. Next this Subpart is amended by the repeal of the current title and provisions of Section 240.1030, Mining Board Authority, and the replacement of same by new rules under the title "Authority of Person Signing Application", that require an applicant to declare on the application their legal status as an individual, partnership, corporation or other entity, and provide the address and signature of the owner or person authorized to sign the application, establishes clear rules concerning authorized signatures, confers the designation of "permittee" and assigns the responsibilities of compliance with all regulatory requirements on the person or entity to whom a permit is issued and clearly states that corporate applicants must have a charter that authorizes the corporation to engage in the permitted activity, and that such applicants must either be incorporated or authorized to do business in the State of Illinois. Sixth, Section 240.1040, Notice and Hearing, is newly added to provide a comprehensive elaboration of the notice requirements, establish a fifteen day objection period, and offers a clear statement of public hearing procedures with respect to vacuum permit applications. Seventh, this Subpart is amended to add new rules, Section 240.1050, Issuance of Permit that, require the Department to issue a permit fifteen days after the postmark date of the Notice sent to adjacent permittees if the applicant otherwise satisfies the requirements of the Act and Rules, prohibits issuance of a permit where a final administrative order of the Department is outstanding against the applicant or against any person or permittee who is an officer, director, partner or owner of more than a 5% interest of the applicant, provides that permits a valid for the life of the well and automatically transfer when a well is transferred, prohibits issuance of a vacuum permit if the correlative rights of adjacent permittees are not protected, and provides for permit revocation after hearing and notice if a field investigation or written request by a permittee within 1/4 mile of an existing well with a vacuum permit reveals that correlative rights of adjacent permittees are not protected. Finally, Section 240.1060, Permit Amendments, is newly added to clarify that exposure of an unpermitted reservoir to vacuum by a permittee without obtaining a permit amendment is prohibited, require the permittee to apply for an amendment on a prescribed form and to be in compliance with Section 240.1040 before Permit Amendments are issued.

Subpart K is being amended to accomplish five objectives. First, the obsolete term "mechanical plug" is deleted from the definitions section. Second, administrative procedures related to temporary abandonment status are clarified by deleting condition that any final administrative decision relating to the well be abated before temporary abandonment status is

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granted, exempting permitted gas wells with gas at the surface from fluid level requirements. Next, the obsolete term "mechanical plug" is deleted and replaced with the term "cast iron" as appropriate throughout this Subpart. Fourth, it is clarified that the placement of any material or substance in an unplugged well to either fill or bridge the hole for the purpose of avoiding proper plugging procedures is prohibited. Lastly, this Subpart is amended to permit the setting of a cement pump down plug as an alternate plugging method to setting a cast iron plug except if the well is flowing fluid to the surface.

Subpart N is being amended to accomplish nine objectives. First, two current definitions have been expanded and two new definitions have been added to enhance understanding of this Subpart. Second, this Subpart is being amended to clarify its applicability. Next, the amended rules delete the requirement that a current permittee provide a copy of the document which evidences conveyance to a new permittee of the right to drill or operate a well. Fourth, the new permittee is required to provide documentation supporting their right to drill and produce a well. Fifth, provisions related to permit transfer hearings and duplicitous of Section 240.1490, including the conflicting time period for submitting a hearing request, are deleted. Sixth, a bonding requirement is established for new permittees who achieve such status pursuant to an Administrative Record Correction Transfer. Next, Section 240.1490 is created from the entirety of former Section 240.1480 (d). Eighth, it is clearly articulated that the hearing officer for all hearings under this Subpart is to be impartial and not employed by the Department. Lastly, the address of the Department is deleted.

Subpart O is being amended to accomplish six objectives. First, two clerical errors are corrected. Next, bonding requirements are modified to exclude applicants against whom a final administrative decision for the failure to pay permit fees has been issued, and to include applicants who have had wells plugged with funds from the Plugging and Restoration Fund. Third, the street address and post office box number of the Springfield office of the Illinois Department of Mines and Minerals, Oil and Gas Division, is deleted to accommodate the possibility of a future change of address and post office box number. Fourth, requirements pertaining to certificates of deposit have been clarified. Fifth, the provision that required a bond forfeiture hearing to be held within 15 days of request has been changed to require such hearing to be scheduled within this time period. Finally, this Subpart is being amended to grant the Director review authority and dispositional responsibilities with respect to contested bond forfeiture procedures.

Subpart P is being amended to accomplish two objectives. First, prohibits a permittee who fails to reimburse any funds expended from the Plugging and Restoration Fund on their behalf from operating any other wells in the permittee's name. Secondly, after repayment of all funds paid from the

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Plugging and Restoration Fund, imposes a bonding requirement on such permittee.

Subpart Q is being amended to accomplish three objectives. First, annual fees for wells reported to be transferred but not yet approved for such status on July 1, are to be assessed to and payable by the current permittee. Second, permittees who fail to submit an annual reporting form are required to submit such information concurrently with all well permit and transfer requests. Lastly, November 1 of each year is deemed to be the delinquency date for unpaid annual well fees, and decrees the wells covered by such unpaid fees to be abandoned. Subpart R is being amended to make proposed permit amendments subject to the same permitting procedure established for drilling, deepening or converting an oil or gas production well, a test hole or Class II well.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The proposed rules will have no impact on local units of government.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this notice to:

Alfred L. Clayborne, Legal Counsel
Illinois Department of Mines and Minerals
300 West Jefferson, Suite 300
Springfield, IL 62791-0137
(217) 782-6791

Commenters must provide a name and address. Comments must be directed to a specific subsection and must be made on a separate sheet of 8 1/2 x 11 inch paper.

Comments may include data, views, arguments or any documents relevant to the proposals noted above in the Description of Subjects and Issues involved. All comments are due at the above address no later than 5:00 p.m. on April 11, 1995. Comments received thereafter will not be considered in this rulemaking.

The Department will hold a public hearing on the proposed rulemaking on March 29, 1995 at 11:00 a.m. at the Ramada Hotel in Mt. Vernon, Illinois. Representatives of small businesses are encouraged to comment about the impact

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of the proposed rulemaking at this public hearing.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses affected: All oil and gas well operators employing less than fifty people and having less than four million dollars in annual sales.

B) Reporting, bookkeeping or other procedures required for compliance:

Section 240.245 increases the information an applicant must submit by requiring a surveyed legal location of the vertical wellbore and the legal location of each proposed horizontal drainhole, a plat map showing the surface location of the vertical wellbore and the location and length of each horizontal drainhole, a copy of the directional drilling survey for each horizontal drainhole and a Well Completion Report and/or Well Drilling Report.

Section 240.310 requires an applicant to specify the type of Class II well being permitted as an Injection, Disposal or Commercial Disposal well.

Section 240.450 requires the applicant to secure a separate permit for each directionally drilled well drilled with more than one directional hole from a single vertical wellbore.

Section 240.795 requires the permittee to maintain for three years a record of the name of the permittee from which Class II fluids are delivered, the date of deliver, the number of barrels of fluid delivered, the name and location of the lease from which the fluids were produced and the name and vehicle permit number of the Liquid Oilfield Waste Hauler delivering the fluid.

Section 240.1010 requires an applicant to apply for a permit on forms prescribed by the Department and execute same under penalties of perjury.

Section 240.1020 requires the applicant to proved the name and address of the permittee, the well name, the legal location of the well, the names and depths of the formations subject to a vacuum, and a detailed map of the boundaries and well locations.

Section 240.1030 specifies applicant signature requirements, and requires corporate applicants to have appropriate charter authorization and to be incorporated or authorized to do business in Illinois.

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Section 240.1040 requires the applicant to notify other permittees operating oil or gas wells within a 1/4 mile radius by certified mail where the use of vacuum is proposed and specifies the information to be contained in the notice.

Section 240.1060 requires an application for a permit to amend a vacuum.

Section 240.1430 requires the permittee to submit a copy of the lease assignment, voluntary release, court order involuntarily terminating a lease or any other document evidencing the assignment, transfer or sale to a new permittee of the right to drill and operate the well or wells on the land in question.

Section 240.1480 requires the permittee to provide a bond prior to operating the transferred wells.

Section 240.1520 requires the permittee to place negotiable certificates of deposit in the Department's possession, or to endorse a withdrawal receipt and place same in the Department's possession if the certificate of deposit is non-negotiable.

Section 140.1640 requires the permittee to post a bond prior to permitting or operating any wells after repayment of all funds expended from the Plugging and Restoration Fund on the permittees behalf.

C) Types of professional skills necessary for compliance: None

The full text of the Proposed Amendments begins on the next page.

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TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 240
THE ILLINOIS OIL AND GAS
ACT

SUBPART A: GENERAL PROVISIONS

Section
240.10 Definitions
240.20 Prevention of Waste (Repealed)
240.30 Jurisdiction (Repealed)
240.40 Enforcement of Act (Repealed)
240.50 Delegation of Authority (Repealed)
240.60 Right of Inspection (Repealed)
240.70 Right of Access (Repealed)
240.80 Sworn Statements (Repealed)
240.90 Additional Reports (Repealed)
240.100 When Rules Become Effective (Repealed)
240.110 Notice of Rules (Repealed)
240.120 Forms (Repealed)
240.130 Hearings--Notices (Repealed)
240.131 Unitization Hearings
240.132 Integration Hearings
240.133 Hearings to Establish Pool-Wide Drilling Units
240.140 Violations Not Requiring Formal Action
240.150 Notice of Violation
240.160 Director's Decision
240.170 Cessation Order
240.180 Enforcement Hearings
240.190 Temporary Relief
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SUBPART B: PERMIT APPLICATION PROCEDURES FOR PRODUCTION WELLS

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240.200 Applicability
240.210 Application for Permit to Drill, Deepen or Convert to a Production Well
240.220 Contents of Application
240.230 Authority of Person Signing Application
240.240 Additional Requirements for Directional Drilling
240.245 Additional Requirements for Horizontal Drilling
240.250 Issuance of Permit to Drill
240.255 Underground Injection and Disposal Projects (Recodified)
240.260 Change of Well Location
240.270 Application for Approval of Enhanced Recovery Injection and Disposal

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Operations (Repealed)
240.280 Duration of Underground Injection Well Orders (Repealed)

SUBPART C: PERMIT APPLICATION PROCEDURES FOR CLASS II UIC WELLS

Section
240.300 Applicability
240.305 Transfer of Management (Recodified)
240.310 Application for Permit to Drill, Deepen, Convert or Amend to a Class II UIC Well
240.320 Contents of Application
240.330 Authority of Person Signing Application
240.340 Proposed Well Construction and Operating Parameters
240.350 Groundwater and Potable Water Supply Information
240.360 Area of Review
240.370 Public Notice
240.380 Issuance of Permit
240.390 Permit Amendments
240.395 Update of Class II UIC Well Permits Issued Prior to July 1, 1987

SUBPART D: SPACING OF WELLS

Section
240.400 Definitions
240.410 Drilling Units
240.420 Well Location Exceptions within Drilling Unit
240.430 Drilling Unit Exceptions
240.440 More Than One Well on a Drilling Unit
240.450 Directional Drilling
240.455 Horizontal Drilling
240.460 Modified Drilling Unit
240.465 Special Drilling Unit
240.470 Establishment of Pool-Wide Drilling Units Based Upon Reservoir Characteristics

SUBPART E: WELL DRILLING,
COMPLETION AND WORKOVER REQUIREMENTS

Section
240.500 Definitions
240.510 Department Permit Posted
240.520 Drilling Fluid Handling and Storage
240.525 Saltwater or oil Based Drilling Fluid Handling and Storage
240.530 Completion Fluid and Completion Fluid Waste Handling and Storage
240.540 Drilling and Completion Pit Restoration
240.550 Disposal of General Oilfield Wastes

SUBPART F: WELL CONSTRUCTION, OPERATING AND REPORTING

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REQUIREMENTS FOR PRODUCTION WELLS
OPERATING REQUIREMENTS

Section

240.600 Applicability
240.610 Construction Requirements for Production Wells
240.620 Remedial Cementing of Leaking Wells
240.630 Operating Requirements
240.640 Reporting Requirements
240.650 Confidentiality of Well Data
240.655 Mechanical Integrity Testing for Class II Injection Wells (Repealed)
240.660 Monitoring and Reporting Requirements for Enhanced Recovery Injection and Disposal Wells (Repealed)
240.670 Avoidable Waste of Gas (Repealed)
240.680 Escape of Unburned Gas Prohibited (Repealed)

SUBPART G: WELL CONSTRUCTION, OPERATING AND REPORTING REQUIREMENTS FOR CLASS II UIC WELLS

Section

240.700 Applicability and Definitions
240.710 Surface and Production Casing Requirements for Newly Drilled Class II UIC Wells Drilled After the Effective Date of this Section
240.720 Surface and Production Casing Requirements for Conversion to Class II UIC Wells
240.730 Surface and Production Casing Requirements for Existing Class II UIC Wells
240.740 Other Construction Requirements for Class II UIC Wells
240.750 Operating Requirements for Class II UIC Wells
240.760 Establishment of Internal Mechanical Integrity for Class II UIC Wells
240.770 Establishment of External Mechanical Integrity for Class II UIC Wells
240.780 Reporting Requirements for Class II UIC Wells
240.790 Confidentiality of Well Data
240.795 Commercial Saltwater Disposal Well

SUBPART H: LEASE OPERATING REQUIREMENTS

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240.800 Definitions
240.805 Lease and Well Identification
240.810 Tanks and Containment Dikes
240.820 Flowlines
240.830 Power Lines
240.840 Equipment Storage
240.850 Concrete Storage Structures
240.860 Pits

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240.861 Existing Pit Exemption
240.870 Leaking Unpermitted Drill Hole
240.880 Spill Notification
240.890 Crude Oil Spill Clean-Up Requirements
240.891 Crude Oil Spill Waste Disposal
240.895 Produced Water Spill Clean-Up Requirements

SUBPART I: LIQUID OIL FIELD ~~WASTE AND SPILL RELATED~~ WASTE HANDLING AND DISPOSAL

Section

240.905 Application for Permit to Operate a Liquid Oilfield Waste Transportation System
240.906 Application for a Liquid Oilfield Waste Transportation Vehicle Permit
240.910 Inspection of Vehicles (Tanks)
240.920 Issuance of Liquid Oilfield Waste Transportation System and Vehicle Permits
240.925 Liquid Oilfield Waste Recordkeeping Requirements
240.930 Produced Water
240.940 Crude Oil Bottom Sediments
240.950 Crude Oil Spill Waste Disposal (Repealed)
240.960 Oil Field Brine Hauling Permit Conditions (Repealed)
240.970 Inspection of Vehicles (Repealed)
240.980 Transfer of Permits (Repealed)
240.985 Revocation of Oil Field Brine Hauling Permit (Repealed)
240.990 Records and Reporting Requirements (Repealed)
240.995 Bonds--Blanket Surety Bond (Repealed)

SUBPART J: VACUUM

Section

240.1000 Definitions
240.1005 ~~Requirements for Use of Vacuum Pumps~~ Applicability
240.1010 ~~Application for Use of Vacuum~~ Application for Vacuum Permit
240.1020 ~~Notice and Hearing on Application~~ Contents of Application
240.1030 ~~Mining Board Authority~~ Authority of Person Signing Application
240.1040 Notice and Hearing
240.1050 Issuance of Permit
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SUBPART K: PLUGGING OF WELLS

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240.1105 Plugging of Non-Productive Wells (Repealed)
240.1110 Definitions
240.1120 Plugging of Uncased Wells
240.1130 Plugging or Temporary Abandonment of Inactive Wells and Certain

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Class II UIC Wells
240.1140 General Plugging Procedures and Requirements
240.1150 Specific Plugging Procedures
240.1151 Procedures for Plugging Coal Seams
240.1160 Plugging Fluid Handling and Storage
240.1170 Plugging Fluid Waste Disposal and Well Site Restoration
240.1180 Lease Restoration
240.1181 Lease Restoration Requirements
240.1190 Filing Plugging Report

SUBPART L: REQUIREMENTS FOR OTHER TYPES OF WELLS

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240.1200 Applicability
240.1205 Application for Permit to Drill a Test Well or Drill Hole
240.1210 Contents of Application for Permit to Drill or Convert to an Observation, Gas Storage Well or Service Well (Repealed)
240.1220 Contents of Application for Coal Test Hole, Mineral Test Hole, Structure Test Hole, or Coal or Mineral Groundwater Monitoring Well
240.1230 Authority of Person Signing Application
240.1240 Issuance of Permit
240.1250 When Wells Shall Be Plugged and Department Notification
240.1260 Plugging and Restoration Requirements
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240.1330 Well Locations Prohibited
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240.1360 Operational Requirements Over Active Mine
240.1370 Inspection of Vehicles (Recodified)
240.1380 Transfer of Permits (Recodified)
240.1385 Revocation of Oil Field Brine Hauling Permit (Recodified)
240.1390 Records and Reporting Requirements (Recodified)
240.1395 Bonds--Blanket Surety Bond (Recodified)

SUBPART N: TRANSFER OF PERMIT

Section
240.1400 Definitions
240.1405 Transfer of Management (Repealed)

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240.1410 Applicability
240.1420 When Notification to be Made
240.1430 Responsibilities of Current Permittee
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240.1450 Authority of Persons Signing Notification
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SUBPART R: REQUIREMENTS IN UNDERGROUND GAS STORAGE FIELDS AND FOR GAS STORAGE AND OBSERVATION WELLS

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240.1810 Submission of Underground Gas Storage Field Map
240.1820 Permit Requests in a Underground Gas Storage Field
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240.1840 Authority of Person Signing Application
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240.1860 Storage Field Operating Requirements
240.1865 Liquid Oilfield Waste Disposal
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SUBPART S: REQUIREMENTS FOR SERVICE WELLS

Section
240.1900 Applicability
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240.1960 Converting to Water Well

AUTHORITY: Implementing and authorized by Sections 6 and 8a of the Illinois Oil and Gas Act [225 ILCS 725/6 and 8a].

SOURCE: Adopted November 7, 1951; emergency amendment at 6 Ill. Reg. 903, effective January 15, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5542, effective April 19, 1982; codified at 8 Ill. Reg. 2475; amended at 11 Ill. Reg. 2818, effective January 27, 1987; amended at 14 Ill. Reg. 2317, effective January 25, 1990; recodified at 14 Ill. Reg. 3053; amended at 14 Ill. Reg. 13620, effective August 8, 1990; amended at 14 Ill. Reg. 20427, effective January 1, 1991; amended at 15 Ill. Reg. 2706, effective Jan. 31, 1991; recodified at 15 Ill. Reg. 8566; recodified at 15 Ill. Reg. 11641; emergency amendment at 15 Ill. Reg. 14679, effective September 30, 1991 for a maximum of 150 days; amended at 15 Ill. Reg. 15493, effective October 10, 1991; amended at 16 Ill. Reg. 2576, effective February 3, 1992; amended at 16 Ill. Reg. 15513, effective September 29, 1992; expedited correction at 16 Ill. Reg. 18859, effective September 29, 1992; emergency amendment at 17 Ill. Reg. 1195, effective January 12, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 2217, effective February 8, 1993; amended at 17 Ill. Reg. 14097, effective August 24, 1993; amended at 17 Ill. Reg. 19923, effective November 8, 1993; amended at 18 Ill. Reg. 8061, effective May 13, 1994; emergency amendment at 18 Ill. Reg. 10380, effective June 21, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16361, effective November 18, 1994; amended at 19 Ill. Reg. _____, effective _____.

SUBPART A: GENERAL PROVISIONS

Section 240.10 Definitions

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"Annular or casing injection/disposal well"--means a well into which fluids are injected between the surface casing and the well bore, the surface casing and the production casing, and/or the production casing and the tubing, or a well into which fluids are injected which does not have production casing, tubing and packer.

"Cement"--means all petroleum industry cements meeting the requirements set forth in "Specifications for Oil Well Cements and Cement Additives", API Standard 10A, January, 1974, published by the American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005 (this incorporation does not include any later publications or editions), except as provided in Subpart K of these rules.

Class II fluids are:

Produced water and/or other fluids brought to the surface in connection with drilling, completion, workover and plugging of oil and natural gas wells; enhanced recovery operations; or natural gas storage operations;

Produced water and/or other fluids from above, which prior to re-injection have been:

used on site for purposes integrally associated to oil and natural gas well drilling, completion, workover and plugging, oil and gas production, enhanced recovery operations or natural gas storage;

chemically treated or altered to the extent necessary to make them usable for purposed integrally related to oil and natural gas well drilling, completion, workover and plugging, oil and gas production, enhanced recovery operations, or natural gas storage operations;

commingled with fluid wastes resulting from fluid treatments outlined above, provided the commingled fluid wastes do not constitute a hazardous waste under the Resource Conservation and Recovery Act.

Fresh water from groundwater or surface water sources which is used for purposes integrally related or associated with oil and natural gas well drilling, completion, workover and plugging oil and gas production, enhanced recovery operations or natural gas storage;

Waste fluids from gas plants (including filter backwash, precipitated sludge, iron sponge, hydrogen sulfide and scrubber liquid) which are an integral part of oil and gas production operations, and waste fluids from gas dehydration plants (including glycol-based compounds

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and filter backwash) which are an integral part of natural gas storage operations, unless the gas plant or gas dehydration plant wastes are classified as hazardous under the federal Resource Conservation and Recovery Act.

"Class II UIC well"--means a an Injection, Disposal or Commercial Disposal well into which fluids are injected:

Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations unless those waters are classified as a hazardous waste at the time of injection;

For enhanced recovery of oil or natural gas; and

For storage of hydrocarbons which are liquid at standard temperature and pressure.

"Commercial Disposal Well" means a permitted Class II well for which the permittee receives deliveries of Class II fluids by tank truck and charges a fee for the specific purpose of disposal of Class II fluids.

"Convert"--means to change an oil, gas, Class II UIC, water supply, observation or gas storage well to another of those types of wells, requiring the issuance of a new permit.

"Department"--means *the Department of Mines and Minerals of the State of Illinois.* ~~(Ill.~Rev.~Stat.~1991,~ch.~96-1/2,~par.~5401)~~ [225 ILCS 725]

"Directional Drilling"-- means the controlled directional drilling when the bottom of the well bore is directed away from the vertical position.

"Disposal Well"--means a Class II UIC well into which fluids brought to the surface in connection with oil or natural gas production are injected into a non-productive oil or gas zone for purposes other than enhanced oil recovery.

"District Office"--means the Department's office for the district in which the well is located.

"Enhanced Oil Recovery"--means *any* secondary or tertiary *recovery method used in an effort to recover hydrocarbons from a pool by injection of fluids, gases or other substances to maintain, restore or augment natural reservoir energy, or by introducing gases, chemicals, other substances or heat or by in-site combustion, or by any*

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combination thereof. ~~(Ill.~Rev.~Stat.~1991,~ch.~96-1/2,~par.~5401)~~ [225 ILCS 725]

"Enhanced Oil Recovery Injection Well"--means a Class II UIC well used for enhanced oil recovery.

"Flowline"--means all injection, produced water and oil flow lines located within the boundaries of a lease or unit, or gathering lines between leases to a centralized storage area, or to the point where the lines connect with a primary transportation pipeline.

"Fresh Water"--means surface and subsurface water in its natural state useful for drinking water for human consumption, domestic livestock, irrigation, industrial, municipal and recreational purposes, and which will support aquatic life and contains less than 10,000 mg/liter total dissolved solids.

"General Oilfield Waste"--means paper, trash, oily rags, chemical containers, oil filters and gaskets, used motor oil, hydraulic fluids, diesel fuels and other similar wastes generated during completion, production and plugging activities.

"Injection Well"--means a Class II well into which fluids brought to the surface in connection with oil or natural gas production are injected into a producing oil or gas zone for purposes of enhanced oil recovery.

"Liquid Oilfield Waste"--means *oilfield brines,* produced waters, *Class II fluids, tank and pit crude oil bottom sediments, and drilling and completion fluids, to the extent those wastes are now or hereafter exempt from the provisions of Subtitle C of the Federal Resource Conservation Recovery Act of 1976.* ~~(Ill.~Rev.~Stat.~1991,~ch.~96-1/2,~par.~5414.1)~~ [225 ILCS 725/8c]

"Liquid Oilfield Waste Hauler"--means a person holding a permit to operate a liquid oilfield waste transportation system.

"Orphan Well"--means *a well for which: (1) No fee assessment under Section 19.7 of the Act has been paid or no other bond coverage has been provided for 2 consecutive years; (2) no oil or gas has been produced from the well or from the lease or unit on which the well is located for 2 consecutive years; and (3) no permittee or owner can be identified or located by the Department. Orphaned wells include wells that may have been drilled for purposes other than those for which a permit is required under the Act if the well is a conduit for oil or salt water intrusions into fresh water zones or onto the surface which may be caused by oil and gas operations.* ~~(Ill.~Rev.~Stat.~1991,~ch.~96-1/2,~par.~5401)~~ [225 ILCS 725]

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"Owner"--means *the person who has the right to drill into and produce from any pool, and to appropriate the production either for himself or for himself and another, or others, excluding the mineral owner's royalty if the right to drill and produce has been granted under an oil and gas lease.* ~~{Ill. Rev. Stat. 1991, ch. 96 1/2, par. 540}~~ [225 ILCS 725]

"Permit"--means the Department's written authorization allowing a well or test hole to be drilled, deepened, converted and/or operated.

"Permittee"--means the *person holding or required to hold the permit, and who is also responsible for paying assessments in accordance with Section 19.7 of the Act and, where applicable, executing and filing the bond associated with the well as principal. When the ownership of the right to drill for and produce oil or gas consists of fractional undivided working interests, the permit shall be issued to an owner designated under an operating or other similar agreement as having the full rights and responsibility for operating the well. In the absence of such agreement, the permit shall be issued to an owner designated by the majority in interest of the owners of the well.* ~~{Ill. Rev. Stat. 1991, ch. 96 1/2, par. 540}~~ [225 ILCS 725]

"Person"--means *any natural person, corporation, association, partnership, governmental agency or other legal entity, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind.* ~~{Ill. Rev. Stat. 1991, ch. 96 1/2, par. 540}~~ [225 ILCS 725]

"Pool"--means *a natural underground reservoir containing, in whole or in part, a natural accumulation of oil or gas, or both. Each productive zone or stratum of a general structure, which is completely separated from any other zone or stratum in the structure, is deemed a separate "pool" as used herein.* ~~{Ill. Rev. Stat. 1991, ch. 96 1/2, par. 540}~~ [225 ILCS 725]

"Produced Water"--means water regardless of chloride and total dissolved solids (TDS) content which is produced in conjunction with oil and/or natural gas production and natural gas storage operations.

"Production Casing"--means the string of casing placed in a well and used for the purpose of isolating the production or injection formation.

"Repressure"--means to increase the reservoir pressure by the introduction of gas, air or water or other fluid into the reservoir.

"Reservoir"--for the purpose of these rules, is interchangeable with the term pool.

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"Rotary Drilling"--means the hydraulic process of drilling a well for oil or gas as such method is commonly used in the industry.

"Shooting"--means the exploding of nitroglycerin or other high explosives in a well for the purpose of increasing the production of oil or gas.

"Surface Waters"--means any river, stream, lake, pond or intermittent stream.

"Tank"--means a vessel into which oil or water is gathered, produced or stored.

"The Act"--means the provisions of the Illinois Oil and Gas Act ~~{Ill. Rev. Stat. 1991, ch. 96 1/2, pars. 540 et seq.}~~ [225 ILCS 725].

"Undeveloped Limits of a Mine"--means that portion of a mine where the entries have not been driven to the boundaries of the mine property.

"Vacuum"--means pressure which is reduced below the pressure of the atmosphere.

"Water Drainage Way--means any drainage ditch, roadside ditch, grassy waterway or any other natural or manmade surface or underground water drainage system.

"Well"--means any drill hole required to be permitted under subsection (2) of Section 6 or Section 12 of the Act.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.180 Enforcement Hearings

a) *A person or permittee shall have 30 days from the date of service of the Director's decision or of the cessation order to request a hearing.* ~~{Ill. Rev. Stat. 1991, ch. 96 1/2, par. 543}~~ [225 ILCS 725] Except as provided in subsection (b) below, a person or permittee seeking to contest any Director's decision in which a civil penalty has been assessed shall submit the assessed amount to the Department together with a timely request for hearing. The assessed amount shall be held in an interest-bearing escrow account pending the outcome of the hearing. The assessed amount together with any interest, shall be returned to the person or permittee at the conclusion of the hearing if the Department does not prevail. All requests for hearing shall be mailed or delivered to the Illinois Department of Mines and Minerals, Oil and Gas Division, ~~300 West Jefferson Street, Suite 300, P.O. Box 10440,~~ Springfield, Illinois ~~62791-0440~~.

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b) If a civil penalty assessment is imposed against a person pursuant to Section 240.160(d), such person will not be required to prepay the penalty into escrow in order to contest either the amount of the penalty or the fact of the violation.

c) *Upon receipt of a request for hearing submitted in accordance with subsections (a) or (b), the Department shall provide an opportunity for a formal hearing upon not less than 5 days written notice mailed to the permittee or person submitting the hearing request.* ~~(Ill. Rev. Stat. 1991, ch. 96 1/2, par. 5413)~~ [225 ILCS 725/8a] The hearing shall be conducted by ~~the~~ an impartial hearing officer ~~under contract with~~ not employed by the Department and shall be conducted in accordance with the following procedures:

1) A pre-hearing conference shall be scheduled within 30 days of the request for hearing:
   A) to define the factual and legal issues to be litigated at the administrative hearing;
   B) to determine the timing and scope of discovery available to the parties;
   C) to set a date for the parties to exchange all documents they intend to introduce into evidence during the hearing, a list of all witnesses the parties intend to have testify and a summary of the testimony of each such witness;
   D) to schedule a date for the administrative hearing; and
   E) to arrive at an equitable settlement of the hearing request, if possible.
   F) Pre-hearing conferences under this Section may be conducted via telephone conference if such procedure is acceptable to all parties to the hearing. In the event that a telephone conference is not acceptable to all parties, the pre-hearing conference shall be conducted the place designated by the hearing officer.
   G) Either party may file motions for default judgment, motions for summary judgment, motions for protective orders and motions for orders compeling discovery. The Department's hearing officer shall render an order granting or denying such motions filed within fifteen (15) days of service. Any order granting a motion for default judgment or a motion for summary judgment shall constitute the Department's final administrative decision as to the Director's Decision or cessation order being contested.

2) If a settlement agreement is entered into at any stage of the hearing process, the person to whom the notice of violation or cessation order was issued will be deemed to have waived all right to further review of the violation or civil penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a waiver clause to this effect. All settlement agreements shall be executed by the hearing officer and shall constitute the

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Department's final administrative decision as to the Director's Decision or cessation order being contested.

3) All hearings under this Section shall be conducted in accordance with Article 10 of the Illinois Administrative Procedure Act ~~(Ill. Rev. Stat. 1991, ch. 127, par. 1010-5 et seq.)~~ [5 ILCS 100/10-10, 100/10-25, 100/10-35, 100/10-40, 100/10-50 and 100/10-60]. All hearings under this Section shall be conducted in the Department's offices located ~~at 300 West Jefferson Street, Suite 300,~~ in Springfield, Illinois. However, the Department may conduct a hearing under this Section at a site located closer than Springfield, Illinois, to the production and/or injection/disposal well identified in the Director's decision or cessation order being contested if facilities are available and convenient satisfactory to the Department.

4) At the hearing the Department shall have the burden of proving the facts of the violation alleged in the notice of violation or cessation order at issue. The amount of any civil penalty assessed shall be presumed to be proper; however, the operator may offer evidence to rebut this presumption. The standard of proof shall be a preponderance of the evidence. The person or permittee shall have the right to challenge the hearing officer if the person or permittee believes the hearing officer is prejudiced against him or has a conflict of interest. If the hearing officer disqualifies himself, the Director shall designate a new hearing officer. The hearing officer shall conduct the hearing, hear the evidence and at the conclusion of the hearing render recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case.

5) The Director shall review the administrative record in a contested case, in conjunction with the hearing officer's recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case. The Director shall then issue the Department's final administrative decision affirming, vacating or modifying the hearing officer's decision.

d) *The person or permittee's failure to request a hearing in accordance with subsection (a) shall constitute a waiver of all legal rights to contest the Director's decision or the cessation order, including the amount of any civil penalty assessed. Within 30 days of the close of the hearing record or expiration of the time to request a hearing, the Department shall issue a final administrative decision, pursuant to Section 10 of the Act.*

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.240 Additional Requirements for Directional Drilling

a) If the applicant intends to deviate from the vertical in accordance with Section 240.450, the application shall include a map showing the proposed direction of deviation and proposed horizontal distance between the end of the well bore and the surface location of the well.
b) Within sixty (60) days after the completion of drilling, a certified directional survey of the well must be filed with the Department showing the surface location of the well, the location of the top and bottom of the producing interval and the location of the end of the well bore.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.245 Additional Requirements for Horizontal Drilling

a) If the applicant intends to drill one or more horizontal drainholes using a short radius, from a vertical wellbore, the wellbore shall be spaced in accordance with Section 240.455.
b) The wellbore shall require only one permit.
c) The application for horizontal drilling shall include:
    1) The legal location of the vertical wellbore and the proposed legal location of the bottomhole termination of each horizontal drainhole.
    2) A plat map showing the surface location of the vertical wellbore and the location and length of each proposed horizontal drainhole. The applicant shall mark each horizontal drainhole on the application with a separate identifier.
    3) A copy of the directional drilling survey for each horizontal drainhole shall be submitted to the Department within sixty (60) days after the completion of drilling of the horizontal drainhole.
    4) A Well Completion Report shall be submitted for the vertical wellbore, if the vertical wellbore is newly drilled, and for each horizontal drainhole in accordance with Section 240.640 (a).
    5) A Well Drilling Report shall be submitted for the vertical wellbore, if the vertical wellbore is newly drilled, and for each horizontal drainhole in accordance with Section 240.640 (b).

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.250 Issuance of Permit to Drill

a) If the applicant satisfies requirements of the Act and Rules the Department shall issue a permit.
b) A permit shall not be issued where a final administrative order of the Department is outstanding against the applicant or against a person or permittee who is an officer, director, partner or owner of more than a 5% interest of the applicant, where obligated funds from the Plugging and Restoration Fund are outstanding under Subpart P, or where annual well fees are outstanding under Subpart Q.

c) Permits shall expire one year from the date of issuance unless acted upon by commencement of drilling, deepening or converting operations authorized by the permit, which are to be continued with due diligence, but not to exceed two (2) years from date of commencement of drilling or conversion operations, at which time the well shall be plugged, production casing set, conversion operations completed or well repermitted. If the drilling rig is removed prior to the expiration of the permit, any further drilling or deepening shall require repermitting.
d) Permits are not transferable prior to the drilling of the well.
e) If during drilling the well is lost (collapsed casing or hole, etc.), the permittee may terminate drilling and move the rig up to 30 feet from the permitted location and commence drilling operations, provided that:
    1) the permittee notifies the District Office prior to the move and receives approval;
    2) a new application and fee is submitted within ten (10) days in accordance with Section 240.220 of this Part; and
    3) The new location is in compliance with all other requirements of this Part.
f) The Department shall revoke a permit that was issued in error or if the application contained an error or misrepresentation~~,~~ or the Permittee fails to meet permit conditions.
g) The Department shall notify the permittee of their intent to revoke a permit effective thirty (30) days from the date of notice unless a hearing is requested in accordance with subsection (h) below.
h) If a written objection to the revocation is filed within thirty (30) days after the date of the notice:
    1) A pre-hearing conference shall be held within fifteen (15) days after the receipt after the request for hearing.
        A) A pre-hearing conference shall be scheduled in order to:
            i) Simplify the factual and legal issues presented by the hearing request;
            ii) Receive stipulations, admissions of fact and of the contents and authenticity of documents;
            iii) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce at the hearing;
            iv) Set a hearing date; and
            v) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion thereof.
        B) Pre-hearing conferences may be held by telephone conference if such procedure is acceptable to all parties.
    2) All hearings under this Subpart shall be conducted in the

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Department's offices located ~~at--300-West-Jefferson-Street,~~ in Suite 300, Springfield, Illinois.

i) At the hearing, the Department shall present evidence in support of its determination under subsection (f) above. The permittee may present evidence contesting the Department's determination under subsection (f) above. The hearing officer may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence.

j) Within thirty (30) days after the close of the record or the receipt of the transcript of the hearing, the Department shall render a decision.

k) The permittee's failure to request a hearing in accordance with subsection (h) shall constitute a waiver of all legal rights to contest the permit revocation decision. Upon the expiration of the time to request a hearing, the Department shall issue a final administrative decision, pursuant to Section 10 of the Act.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART C: PERMIT APPLICATION PROCEDURES FOR CLASS II UIC WELLS

Section 240.300 Applicability

The provisions of this Subpart apply to Injection, Disposal and Commercial Disposal Class II UIC wells.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.310 Application for Permit to Drill, Deepen, Convert or Amend to a Class II UIC Well

a) No person shall drill, deepen or convert any well for use as a Class II UIC well without a permit from the Department.

b) Application for a permit to drill, deepen or convert to a Class II UIC well or amend existing Class II UIC well permit in accordance with Section 240.390(a) of this Part shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury, and accompanied by the non-refundable fee of $100.00 and the required bond under Subpart L.

c) At the time of application they must specify the type of Class II well being permitted as an Injection well, Disposal well or Commercial Disposal well.

~~c)~~d) If the application does not contain all of the required information or documents, the Department shall notify the applicant in writing. The notification shall specify the additional information or documents

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necessary to an evaluation of the application and shall advise the applicant that the application will be deemed denied unless the information or documents are submitted within 60 days following the date of notification.

~~d)~~e) *Any well for which a permit is required under* the *Act, other than a plugged well, which was drilled prior to the effective date of* the *Act and for which no permit has previously been issued, is required to be permitted.* Application for a permit shall be made on forms prescribed by the Department. The application shall be executed under penalties of perjury, and accompanied by the required bond under Subpart L. If application is made on or before August 14, 1991, no permit fee is required, but all other requirements of this Subpart shall apply. An application made after that date shall be accompanied by the non-refundable fee of $100.00. *After* August 14, 1991, *any unpermitted well to which this* Subpart *applies will be deemed to be operating without a permit and subject to the penalties set forth in* the *Act.* ~~(Ill.-Rev.-Stat.-1991,-ch.-96-1/2,-par.-5418)~~ [225 ILCS 725/12]

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART D: SPACING OF WELLS

Section 240.400 Definitions

For the purposes of this Subpart:

"Gas" means a mixture of hydrocarbons and varying quantities of non-hydrocarbons in a gaseous state which may or may not be associated with oil, including those liquids resultant from condensation, but not including casing head gas; and

"Gas well" means a well with a gas to oil production ratio equal to or greater than 10,000 cubic feet of gas to 1 barrel of oil.

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.410 Drilling Units

a) Oil Wells

The Department shall not issue a permit for the drilling or deepening of a well for the production of oil within the State of Illinois unless the proposed well location and spacing conform to the following drilling units:

1) ten (10) acres of surface area lying within the quarter-quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or

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deepened for the production of oil from a reservoir other than limestone/dolomite, the top of which lies less than four thousand (4,000) feet beneath the surface; the location of the well shall not be less than three hundred thirty (330) feet from the nearest external boundary lines of the drilling unit, nor less than six hundred and sixty (660) feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir; or

2) twenty (20) acres of surface area lying within the east-west or north-south one-half of a quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of oil from a limestone/dolomite reservoir, the top of which lies less than four thousand (4,000) feet beneath the surface; the location of the well shall not be less than three hundred thirty (330) feet from the nearest external boundary lines of the drilling unit, nor less than six hundred and sixty (660) feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir; or

3) forty (40) acres of surface area lying within a quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of oil from a reservoir, the top of which lies at or below four thousand (4,000) feet beneath the surface; the location of the well shall be not less than three hundred thirty (330) feet from the nearest external boundary lines of the drilling unit, nor less than nine hundred (900) feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir.

b) Gas Wells

The Department shall not issue a permit for the drilling or deepening of a well for the production of gas within the State of Illinois unless the proposed well location and spacing conform to the following drilling units:

1) ten (10) acres of surface area lying within the quarter-quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of gas from a reservoir other than limestone/dolomite, the top of which lies less than two thousand (2,000) feet beneath the surface; the location of the well shall not be less than three hundred thirty (330) feet from the nearest external boundary lines of the drilling unit, nor less than six hundred and sixty (660) feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir; or

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2) twenty (20) acres of surface area lying within the east-west or north-south one-half of a quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of gas from a limestone/dolomite reservoir, the top of which lies less than two thousand (2,000) feet beneath the surface; the location of the well shall not be less than three hundred thirty (330) feet from the nearest external boundary lines of the drilling unit, nor less than six hundred and sixty (660) feet from the nearest location of a producing well, a well being drilled, or a well for which a permit has previously been issued, but not yet drilled, for a well to the same individual reservoir; or

3) forty (40) acres of surface area lying within a quarter-quarter section of land (as established by the official United States Public Land Survey) for wells drilled or deepened for the production of gas from a reservoir, the top of which lies between two thousand (2,000) feet below the surface, and five thousand (5,000) feet or the top of the Trenton Formation, whichever depth is greater; the location of the well shall not be less than three hundred thirty (330) feet from the nearest external boundary lines of the drilling unit nor less than nine hundred (900) feet from the nearest location of a producing well or well being drilled or for which a permit has previously been issued but not yet drilled for a well to the same individual reservoir.

4) Establishment of Drilling Units for Deep Gas

A) In the case of wells drilled or deepened for the production of gas from a reservoir lying below five thousand (5,000) feet or the top of the Trenton formation, whichever depth is greater, no permit shall be issued for an exploratory well unless the proposed spacing and well location provide for a minimum of 160 acres of surface area lying within a quarter section of land (as established by the official United States Public Land Survey) with the well location not less than six hundred sixty (660) feet from the nearest external boundary line of the drilling unit.

B) After completion of the exploratory well or wells, but prior to commencement of production activities, application shall be made to the Department for the adoption of rules establishing spacing and well location requirements for the reservoir or reservoirs completed. The application shall identify the lands underlying the reservoir or reservoirs for which spacing and well location rules are requested, and shall include any geological, engineering or economic data, studies or reports upon which the requested spacing and well location rules are based.

C) Within twenty (20) days after receipt of the application, the Department shall submit proposed spacing and well

location rules for the reservoir or reservoirs in accordance with Section 5-40 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1005-40), which shall include notice of a public hearing to be commenced no later than twenty (20) days after publication of the notice of proposed rulemaking in the Illinois Register. In addition to the notice requirements of the Illinois Administrative Procedure Act, the applicant shall give notice of public hearing to all permittees of record of oil or gas wells within 1/2 mile of the area described in the proposed rules by first class mail, postage pre-paid, and by publication in a newspaper of general circulation in each county in which any portion of the area described in proposed rules is located at least ten (10) days prior to the public hearing.

D) The public hearing shall be conducted in accordance with the provisions of subsections (d)(4) and (d)(5) of Section 240.370. The Department shall fully consider the record from the public hearing and any other public comment received during the first notice period, and, prior to commencement of the second notice period, shall make such changes to the proposed rules as may be necessary to prevent waste, protect correlative rights and prevent the unnecessary drilling of wells.

~~5) For the purposes of this Subpart:~~

~~A) "Gas" means a mixture of hydrocarbons and varying quantities of non-hydrocarbons in a gaseous state which may or may not be associated with oil, including those liquids resultant from condensation, but not including casing head gas; and~~

~~B) "Gas well" means a well with a gas to oil production ratio equal to or greater than 10,000 cubic feet of gas to 1 barrel of oil.~~

c) Coalbed Gas Wells
The Department shall not issue a permit for the drilling or deepening of a well for the production of coalbed gas from unmined seams of coal unless the proposed well location and spacing conform to drilling unit requirements of ten (10) acres of surface area lying within a quarter-quarter-quarter section of land (as established by the official United States Public Land Survey); the location of the well shall be not less than three hundred thirty (330) feet from the nearest external boundary lines of the drilling unit.

d) Coal Mine Gas Wells
~~The Department shall not issue a permit for the drilling or deepening of a~~A well drilled into a mine void or a pillar within the mined out area for the production of gas from an abandoned coal mine ~~unless the proposed well location and spacing conform to drilling unit requirements of ten (10) acres of surface area lying within a quarter-quarter-quarter section of land (as established by the official United States Public Land Survey); the well location and set back requirements within the drilling unit shall not apply, but the well shall not be located less than three hundred thirty (330) feet from any property or lease boundary line~~ is exempt from the spacing requirements of this Subpart.

e) Other Wells
Class II UIC wells, coal, mineral and structure test holes, observation wells, water supply wells used in relation to oil or gas production, and gas storage wells, are exempt from the requirements of this Section.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.430 Drilling Unit Exceptions

a) In the case of irregular sections containing more or less than six hundred forty (640) acres, in those areas where the United States Government has not made an official survey, in areas covered by the old French Surveys and Grants, in meandered lands, in government lots, and in subdivisions thereof where the acreage in quarter-quarter-quarter sections and quarter-quarter sections do not conform to the requirements of Section 240.410, the Department shall establish drilling units for wells such that drilling units will not cause a greater well density than would be encountered in regular official surveys~~.~~ relative to the distance between wells and the external drilling unit boundary lines specified in Section 240.410.

b) If the proposed oil wells will be part of an enhanced oil recovery project, spacing requirements for oil or gas production wells are as follows:

1) Except as provided in subsection (2) below, the drilling unit and well location requirements of Section 240.410 do not apply to an oil well which is part of an enhanced oil recovery project. For purposes of this subpart, an enhanced oil recovery project is a lease, or a unit composed of a group of leases operating under an agreement which provides for the sharing of production by all of the owners within the unit, which has one or more enhanced oil recovery injection wells permitted and in operation at the time an application for a permit to drill and operate an oil well is filed. The enhanced oil recovery injection wells in operation must be injecting into the reservoir which will be produced in order for the project to classify as an enhanced oil recovery project.

2) Oil wells permitted and drilled in accordance with this section must be located no less than 330 feet of the nearest lease boundary line or unit boundary except that, if at the time of application a lease immediately adjacent to the proposed well has producing wells located less than 330 feet from the common boundary line, then the proposed well may be located at a

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distance closer than 330 feet, but no closer than the distance to the common boundary line of the immediately offsetting well.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.450 Directional Drilling

~~For a directionally drilled well, the drilling unit shall be established and the well permitted with reference to the location of the well where it is proposed to be completed. All portions of the reservoir exposed in the well bore shall meet the well location and spacing requirements specified in Section 240.410.~~

a) A directional drilled well is a wellbore which is purposely deviated from the vertical and intersects the planned zone of production at a projected surface location other than the surface location of the well specified on the permit.

b) For a directionally drilled well, the drilling unit shall be established and the well permitted with reference to the location of the well where it is proposed to be completed. All portions of the reservoir exposed in the wellbore shall meet the well location and spacing requirements specified in Section 240.410 or Section 240.460 for modified units.

c) If a directionally drilled well is drilled with more than one (1) directional hole from a single vertical wellbore, each directional hole shall be considered a separate well and permitted in accordance with Subpart B.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.455 Horizontal Drilling

a) An oil or gas production well may be developed with one or more horizontal drainholes drilled from a single vertical wellbore and shall be permitted in accordance with the provisions of Subpart B.

b) If the proposed well will be part of an enhanced oil recovery project, the spacing requirements for all portions of the horizontal drainholes shall comply with Section 240.430 (b).

c) If the proposed well is to be a primary recovery well, the spacing requirements for all portions of the horizontal drainholes shall comply with Section 240.410, or if a modified or special drilling unit is requested in compliance with Section 240.460 and/or 240.465.

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.460 Modified Drilling Unit

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a) Upon application of any person having an interest in oil or gas in a lease or drilling unit, the Department shall schedule a hearing to consider modification of the location of drilling unit relative to the land survey system and setback requirements specified in Section 240.410 and well density specified in Section 240.465 of this Part.

b) Execution and Filing

1) The petition to ~~establish~~ modify a drilling ~~units~~ unit in accordance with this Section or establish a special drilling unit in accordance with Section 240.465 shall be filed with the Illinois Department of Mines and Minerals, Oil and Gas Division, 300 West Jefferson, Suite ~~300, P.O. Box 10140,~~ in Springfield, Illinois ~~62791-0140~~. The petition shall be deemed filed when it is received by the Department, Oil and Gas Division.

2) Every petition shall be signed by the petitioner or his representative and his address shall be stated thereon. The signature of the petitioner or his representative constitutes a certificate by him that he has read the petition and that to the best of his knowledge, information and belief there is good ground to support the same.

c) Notice of hearing shall be given by the applicant to all mineral owners within the boundaries set forth in the application, and to all permittees having oil or gas wells within one-half (1/2) mile of the boundaries of the lease or drilling unit, which are completed in the proposed zone of production, by U.S. Postal Service certified mail, return receipt requested, and by publication in a newspaper of general circulation in each county in which any portion of the proposed lease or drilling unit or units is located, at least ten (10) days prior to the hearing.

d) Pre-Hearing Conferences

1) Upon his own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet with him for a conference in order to:

A) Simplify the factual and legal issues presented by the hearing request;

B) Receive stipulations, admissions of fact and of the contents and authenticity of documents;

C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and

D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion thereof.

2) Pre-hearing conferences may be held by telephone conference if such procedure is acceptable to all parties.

e) Hearing

1) Conduct of Hearing: Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order

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and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the following:

A) To administer oaths and affirmation;

B) To receive relevant evidence;

C) To regulate the course of the hearing and the conduct of the parties and their counsel therein;

D) To consider and rule upon procedural requests;

E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify;

F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record.

2) Every person desiring to participate in the hearing shall enter his appearance by stating his name and address. Thereafter, such person shall be deemed a party of record.

3) All participants in the hearing shall have the right to be represented by counsel.

4) The Hearing Officer shall allow parties to present statements, testimony, evidence and arguments as may be relevant to the preceding.

5) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit such information as is necessary to reach a decision on the petition.

6) Where applicable, the following shall be addressed prior to receiving evidence:

A) The petitioner may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.

B) Ruling may be made on any pending motions.

C) Any other preliminary matters appropriate for disposition prior to presentation of evidence.

f) Evidence

1) Admissibility: A party shall be entitled to present his case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence received by the presiding Hearing Officer shall exclude evidence which is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under such rules of evidence may be admitted, except where precluded by reasonable, prudent men in the conduct of

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their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.

2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of such fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.

3) Order of Proof: The petitioner shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.

4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.

g) Record of Proceedings; Testimony

The Department shall provide at its expense a certified shorthand reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department as such and included in the record.

h) Postponement or Continuance of Hearing

A hearing may be postponed or continued for due cause by the Hearing Officer upon his own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing.

i) Default

If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of such party. If the failure to appear at such pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Department is notified of such situation on or before the scheduled pre-hearing conference or hearing date, the pre-hearing conference or hearing will be continued or postponed pursuant to Section 240.130(h). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his representative, or similar situations beyond the parties control.

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j) If the Department finds, based on the reservoir's geological and engineering characteristics, that a modified drilling unit or units is necessary to prevent waste, to protect correlative rights, and to prevent the unnecessary drilling of wells, the Department shall enter an order establishing such drilling unit or units. Each order shall:
   1) specify the location of each drilling unit relative to the land survey system; and
   2) specify the set back from the drilling unit boundaries for the location of the oil or gas well on each drilling unit.

k) Order--Final Administrative Decision
The Director's order is a final administrative decision of the Department, pursuant to Section 10 of the Act.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.465 Special Drilling Unit

a) Upon application of any person having an interest in oil and gas in a lease or drilling unit, the Department shall consider the establishment of a special drilling unit for:
   1) spacing other than specified in Section 240.410; or
   2) for the purpose of horizontal drilling in accordance with Section 240.455.

b) Applications to establish a special drilling unit based on directional drilling shall be processed in accordance with the spacing provisions specified under Section 240.460(b) through (k).

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.470 Establishment of Pool-Wide Drilling Units Based Upon Reservoir Characteristics

a) Upon application of any person having an interest in oil or gas in all or a portion of a reservoir, the Department shall consider the establishment of ~~a special drilling unit or~~ poll-wide drilling units other than specified in Section 240.410 of this Part for all or a portion of a reservoir for the production of oil or gas.

b) Applications to establish pool-wide drilling units based upon reservoir characteristics shall be processed in accordance with Section 240.133 of this Part.

c) The following pool-wide oil well spacing is established by the Department.
   1) Ten (10) acre spacing is established for the Devonian and Silurian Limestone in Sections 16, 17, 20, 21 and 29 of Township 3 North, Range 3 West, Schuyler County, Illinois, known as the Brooklyn Pool.

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   2) Ten (10) acre spacing is established for the Devonian and Silurian Limestone in Sections 29, 30, 31 and 32 of Township 1 South, Range 3 West, Sections 24, 25, 26, 33, 34, 35 and 36 of Township 1 South, Range 4 West, Sections 5, 6 and 8 of Township 2 South, Range 3 West and Sections 1, 2, 3 and 4 of Township 2 South, Range 4 West, Brown County, Illinois, known as the Buckhorn Consolidated Pool.
   3) Ten (10) acre spacing is established for the Devonian and Silurian Limestone in Sections 8, 9, 15, 16 and 17 of Township 2 South, Range 4 West, Brown County, Illinois, known as the Siloam Pool.
   4) Ten (10) acre spacing is established for the Devonian and Silurian Limestone in Sections 6 and 7 of Township 1 North, Range 1 West, Sections 1, 2 and 12 of Township 1 North, Range 2 West and Sections 35 and 36 of Township 2 North, Range 2 West, Schuyler County, Illinois, known as the Rushville Central Pool.
   5) Ten (10) acre spacing is established for the Devonian and Silurian Limestone in Sections 25 and 36 of Township 1 South, Range 5 West, Sections 1, 2, 10, 11 and 12 of Township 2 South, Range 5 West, Adams County, Illinois and in Section 7 of Township 2 South, Range 4 West, Brown County, Illinois, known as the Kellerville Pool.
   6) Ten (10) acre spacing is established for the St. Louis Limestone (Mississippian) in Sections 6, 7, 18 and 19 of Township 11 North, Range 11 East and Sections 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, 21, 28, 29 and 30 of Township 11 North, Range 14 West, ~~Cumberland~~ Clark County, Illinois, known as the Westfield Pool.
   7) Ten (10) acre spacing is established for the St. Louis/Salem (Mississippian) Limestone in Sections 31, 32, 33 and 34 of Township 12 North, Range 14 West, ~~Cumberland~~ Clark County, Illinois, known as the Westfield Pool.
   8) Ten (10) acre spacing is established for the St. Louis/Salem (Mississippian) Limestone in Sections 2, 3, 10, 11, 12 and 13 of Township 9 North, Range 14 West and in Sections 14, 15, 22, 23, 24, 25, 26, 35 and 36 of Township 10 North, Range 14 West, Clark County, Illinois, known as the Martinsville Pool.
   9) Ten (10) acre spacing is established for the St. Louis/Salem (Mississippian) Limestone in Sections 22, 23, 26, 27, 34 and 35 of Township 9 North, Range 14 West, Clark County, Illinois, known as the Johnson South Pool.
   10) Ten (10) acre spacing is established for the Trenton Limestone in Sections 34 and 35 of Township 1 South, Range 10 West and in Sections 2, 3, 11 and 24 of Township 2 South, Range 10 West, Monroe County, Illinois, known as the Waterloo Pool.
   11) Ten (10) acre spacing is established for the Trenton Limestone in Sections 27, 33 and 34 of Township 1 North, Range 10 West, St. Clair County, Illinois, known as the Dupo Pool.

d) The following pool-wide natural gas spacing is established by the

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Department.
One Hundred Sixty (160) acre spacing is established for the New Albany Shale Gas in the West half of Section 5, and all of Sections 6, 7, 8, 17, 18, 19 and 20 of Township 4 North, Range 10 West and in Sections 1, 2, 11, 12, 13 and 14 and the East half of Section 24, of Township 4 North, Range 11 West, Lawrence County, Illinois.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART E: WELL DRILLING,
COMPLETION AND WORKOVER REQUIREMENTS

Section 240.500 Definitions

For the purpose of this Subpart the term:

"Completion Fluids" means liquids that are used to complete or workover a well including saltwater, crude oil, frac fluids, acids and other treatment chemicals.

"Completion Fluid Waste" means completion fluids that are generated from the well during completion activities.

"Drilling Fluid" means any ~~medium~~ freshwater based drilling muds, air or air foam mixtures used in the drilling of a well. ~~such as fresh water, crude oil based or fresh water based drilling muds, and air or air foam mixtures.~~

"Drilling Fluid Waste" means drilling fluids, muds and cuttings that are generated from the well during drilling activities.

"Oil Drilling Fluid" means any refined oil based drilling mud or drilling mud containing greater than 5% by volume crude oil.

"Saltwater Drilling Fluid" means any saltwater based drilling mud in excess of 10,000 ppm chlorides.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.520 Drilling Fluid Handling and Storage

a) Cable Tool or Air Rotary Drilling
When drilling with cable tools or air rotary equipment the permittee shall provide at least one (1) sediment pit or above ground container into which drill cuttings and drilling fluids shall be deposited.

b) Rotary Drilling with Mud

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When drilling with rotary drilling equipment using drilling fluids, the permittee shall provide at least one (1) sediment pit or above ground portable container into which drill cuttings shall be deposited, and one (1) drilling fluid circulation pit or leak free above ground container.

c) Drilling Pits
1) Pits used for drill cuttings (sediment pits) and drilling fluids (circulation pits) shall be constructed with sufficient capacity to contain all drilling fluids within the pits, and maintained in a manner that reasonably prevents against overflow during drilling operations, and prior to commencing pit restoration in accordance with Section 240.540 of this Part. Discharge of drilling fluids from the pits into any surface water or water drainage way is prohibited.
2) Sediment pits and drilling fluid circulation pits shall be used only for the temporary storage of drill cuttings and drilling fluids, and shall not be used for the disposal of general oilfield wastes.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.525 Saltwater or Oil Based Drilling Fluid Handling and Storage

a) When drilling with Saltwater or Oil drilling fluids, the permittee shall provide at least one (1) lined sediment pit or above ground, portable container into which drill cuttings shall be deposited, and one (1) lined drilling fluid circulation pit or leak free, above ground container.

b) Pits used for drill cuttings (sediment pits) and drilling fluids (circulation pits) shall be lined with at least a 20 mil thickness liner constructed with sufficient capacity to contain all drilling fluids within the pits, and maintained in a manner that reasonably prevents against overflow during drilling operations and prior to commencing pit restoration in accordance with Section 240.540 of this Part. Discharge of drilling fluids from the pits into any surface water or water drainage way is prohibited.

c) Sediment pits and drilling fluid circulation pits shall be used only for the temporary storage of drill cuttings and drilling fluids, and shall not be used for the disposal of general oilfield wastes.

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.530 Completion Fluid and Completion Fluid Waste Handling and Storage

a) Completion Fluid Handling and Storage Prior to Use
Completion fluids temporarily stored at the well site for use in

completion activities shall be stored in a lined completion pit or leak free above ground container.

b) Completion Fluid Waste Handling and Storage
Completion fluid wastes generated from the well during completion activities shall be collected at the well site in a completion pit or leak free above ground container.

c) Completion and Workover Pits

1) Pits used for completion fluids and completion fluid wastes shall be constructed with sufficient capacity to contain the fluids within the pits, and maintained in a manner that reasonably prevents against overflow during completion activities~~,~~ and prior to commencing pit restoration in accordance with Section 240.540 of this Part. Discharge of drilling fluids from the pits into any surface water or water drainage way is prohibited.

2) The sediment pit or the drilling fluid circulation pit used during drilling operations may be used for the collection of completion fluid wastes during completion activities. If either pit is used as a completion pit, drill cuttings and drilling fluids shall first be removed and a dike constructed to prevent completion fluid wastes from entering the other pit.

3) Completion pits used to store completion fluids prior to use in the well shall be lined with a liner at least ~~30~~ 20 mils in thickness.

4) Completion pits shall be used only for the temporary storage of completion fluids and completion fluid wastes in accordance with the requirements of this subsection, and shall not be used for the disposal of general oilfield wastes.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.540 Drilling and Completion Pit Restoration

a) Sediment and drilling fluid circulation pits, except sediment pits used as completion pits, shall be filled and leveled within six (6) months after drilling ceases. Drilling fluid wastes may be disposed of by on-site burial or surface application. Saltwater or Oil Drilling Fluid wastes shall be removed from the site and disposed in an Illinois Environmental Protection Agency permitted special waste landfill, injected in a Class II well, disposed in a well during the plugging process, injected into a porous formation down the surface casing or intermediate casing and production casing annulus of a production well (provided adequate surface casing protects the freshwater) or solidified and buried in place so as to limit the leaching of the drilling fluids. The liner shall be removed and disposed in an Illinois Environmental Protection Agency permitted landfill or folded over the buried in place at least five (5) feet below the ground surface.

b) If surface application is used for disposal of drilling fluid wastes (prohibited for Saltwater or Oil Based Drilling Fluids), the wastes shall be landspread, incorporated and stabilized to limit run off of storm water containing drilling fluid waste. Discharge of drilling fluid waste into surface waters or water drainage ways is prohibited.

~~b~~c) Drilling pits used as completion pits in accordance with Section 240.530(c)(2) of this Subpart shall be filled and leveled within six (6) months after completion activities cease. Newly constructed completion pits shall be filled and leveled within ninety (90) days after completion activities cease. All completion fluid wastes shall be removed from the pit and disposed of in a Class II Injection well (or in above ground tanks of containers pending disposal) prior to restoration.

~~c~~d) All drilling and completion pits shall be filled and leveled in a manner that allows the site to be returned to original use with no subsidence or leakage of fluids, and where applicable, with sufficient compaction to support farm machinery.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.630 Operating Requirements

a) The well and wellhead shall be maintained in a leak-free condition.

b) All spills of produced water or oil occurring at the well-site due to a leaking wellhead shall be cleaned up in accordance with Subparts H and I.

c) Wells that have not produced for more than two (2) years shall be temporarily abandoned or plugged in accordance with Subpart K.

d) Casinghead gas, produced in conjunction with oil production, that is not collected for use or sale, shall be flared unless the Department approves an exemption from this requirement. In determining whether to approve an exemption, the Department shall consider the quantity of casing head gas produced, the topographical and climatological features at the well site, and the proximity of agricultural structures and crops, inhabited structures, public buildings, and public roads and railways.

e) If Hydrogen Sulfide gas (H[2]S) is present in excess of 20 ppm within five (5) feet in any direction from the wellhead or the end of the flare line, the Department shall specify measures to be taken by the permittee to protect against waste and injury to the public health and safety, which may include the erection of flare lines, the posting of warning signs, and the erection of fencing. The Department may also require the setting of a temporary mechanical or cement plug during any period of time in which the well is not producing or during any period of time necessary to effectuate safety measures. In specifying the measures to be taken by the permittee, the Department shall consider the quantities of H[2]S being emitted, the topographical and

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climatological features at the well site and the proximity of inhabited structures, public buildings, and public roads and railways.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART G: WELL CONSTRUCTION, OPERATING AND REPORTING REQUIREMENTS FOR CLASS II UIC WELLS

Section 240.700 Applicability and Definitions

The provisions of this Subpart apply to all Class II UIC wells - including commercial saltwater disposal wells.

"Commercial Saltwater Disposal Well Facility" means a commercial saltwater disposal well and all associated Class II storage tanks, concrete storage structures, piping and valves.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.750 Operating Requirements for Class II UIC Wells

a) The wellhead shall be maintained in a leak-free condition.
b) Spills of injected fluids occurring at the well-site due to a leaking wellhead shall be cleaned up in accordance with Subpart I.
c) Wells which are not equipped with tubing and packer shall be temporarily abandoned or plugged in accordance with Subpart K.
d) The injection pressure shall not exceed the maximum injection pressure established in accordance with Section 240.340(e) of this Part, unless amended in accordance with Section 240.390(b) of this Part.
e) No change shall be made in the permitted injection zones except in accordance with Section 240.390(a) of this Part or Section 240.395 of this Part.
f) Within the Area of Review as defined in 62 Ill. Adm. Code 240.360, injection fluids shall be confined to the permitted injection zones. If the injection fluids are migrating into unpermitted zones, or into the fresh water zone or to the surface from the well in question or from other wells within the Area of Review, the permittee shall notify the Department, and shut in the well until remedial action that prevents the fluid migration is completed.
g) Mechanical integrity must be established in accordance with Sections 240.760 and 240.770.
h) Only Class II fluids can be injected into a Class II well~~.--Class II fluids are:~~
~~1) Produced water and/or other fluids brought to the surface in connection with drilling, completion, workover and plugging of oil and natural gas wells; oil and natural gas production;~~

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~~enhanced recovery operations; or natural gas storage operations;~~
~~2) Produced water and/or other fluids from (1) above, which prior to re-injection have been:~~
~~A) used on-site for purposes integrally associated to oil and natural gas well drilling, completion, workover and plugging, oil and gas production, enhanced recovery operations or natural gas storage;~~
~~B) chemically treated or altered to the extent necessary to make them usable for purposes integrally related to oil and natural gas well drilling, completion, workover and plugging, oil and gas production, enhanced recovery operations, or natural gas storage operations;~~
~~C) commingled with fluid wastes resulting from fluid treatments outlined in (b), provided the commingled fluid wastes do not constitute a hazardous waste under the Resource Conservation and Recovery Act;~~
~~3) Fresh water from groundwater or surface water sources which is used for purposes integrally related or associated with oil and natural gas well drilling, completion, workover and plugging oil and gas production, enhanced recovery operations or natural gas storage;~~
~~4) Waste fluids from gas plants (including filter backwash, precipitated sludge, iron sponge, hydrogen sulfide and scrubber liquid) which are an integral part of oil and gas production operations; and waste fluids from gas dehydration plants (including glycol based compounds and filter backwash) which are an integral part of natural gas storage operations, unless the gas plant or gas dehydration plant wastes are classified as hazardous under the federal Resource Conservation and Recovery Act;~~

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.760 Establishment of Internal Mechanical Integrity for Class II UIC Wells

a) For purposes of this Section, establishment of Internal Mechanical Integrity includes proper placement of the packer in accordance with subsection (b) below and successful completion of a pressure test in accordance with subsection (f) below.
b) Injection shall be through tubing and packer. The packer shall be placed no higher that two hundred (200) feet above the uppermost perforations or the casing seat in an open hold completion, provided the packer is within the cemented portion of the production casing such that there is at least fifty (50) feet of cement above the packer, and further provided the packer is no less than one hundred (100) feet below the base of the fresh water. No perforations shall

be left open above the packer unless they are isolated by a dual packer or concentric packer system. If a dual packer is used, the uppermost packer must satisfy the placement requirements of this subsection.

c) If the packer cannot be set in accordance with subsection (b) above due to existing well construction or an obstruction in the well, the permittee may request and the Department may specify an alternate packer setting depth provided the packer remains within the cemented portion of the surface casing. In determining an alternate packer setting depth the Department shall take into consideration the current construction of the well, the depth of the freshwater and the nature of the obstruction.

ed) The permittee shall contact the District Office in which the well is located at least twenty-four (24) hours prior to the initial setting or any resetting of the packer in a Class II UIC well to enable an inspector to be present when the packer is set. Setting of the packer must be reported on a form prescribed by the Department.

de) An internal mechanical integrity test shall be performed:

1) prior to initial injection into a newly permitted Class II UIC well;

2) prior to initial injection into a Class II UIC well after a change to a new, permitted injection zone;

3) prior to resuming injection into any Class II UIC well after any work over of the well involving the resetting or movement of a packer;

4) prior to initial injection into a Class II UIC well after the well has been reactivated from temporary abandonment status;

5) whenever the Department has reason to believe, based upon well records or field observation, and subject to the provisions of Sections 240.140, 240.150 and 240.170 of this Part, that the Class II UIC well may be leaking or improperly constructed; and

6) at least once every five (5) years measured from the date of the last successful test~~;~~ unless a temporary abandonment is approved in accordance with Section 240.1130.

ef) All Class II UIC wells not subjected to an internal mechanical integrity pressure test as of September 1, 1990 shall be tested by September 1, 1995, unless temporarily abandoned in accordance with Section 240.1130 within 5 years of the effective date of this Section. During the first four (4) years, each permittee shall conduct an internal mechanical integrity test each year commencing September 1 on at least 20% of the permittee's total Class II UIC wells of record as of September 1 as reported to each permittee by the Department. During the fifth year each permittee shall conduct an internal mechanical integrity test on all remaining untested Class II UIC wells that are of record September 1, 1994 or are acquired during the year ending September 1, 1995. Class II UIC wells sold or acquired during the first four years shall not affect the total number of wells from which the 20% testing requirement is derived for that year. Wells

tested during the year in which they are transferred shall count toward the 20% testing requirement of the permittee who conducted the test. Class II UIC wells temporarily abandoned, converted to production wells or plugged in accordance with the provisions of Subpart K during any year shall count toward the 20% testing requirement.

fg) Pressure Test:

The following pressure test shall be performed on Class II UIC wells to establish the internal mechanical integrity of the tubing, casing and packer of the well. The permittee shall contact the District Office in which the well is located at least twenty-four (24) hours prior to conducting a pressure test to enable an inspector to be present when the test is done. The permittee shall report the test results on a form prescribed by the Department.

1) Pressure Test

The casing-tubing annulus above the packer shall be tested under the supervision of the Department at a minimum pressure differential between the tubing and the annulus of 50 PSIG for a period of 30 minutes. In addition, the casing-tubing annulus starting test pressure shall not be less than 300 PSIG and may vary no more than five (5) percent of the starting test pressure during the test. The well may be operating or shut in during the test.

2) Monitoring Test

For those wells which are structurally unable to withstand the pressure test specified in subsection (d)(1) above because the packer would unseat, but not because the well is improperly constructed, the permittee may make application to perform a monitoring test in lieu of the pressure test on forms prescribed by the Department. An approved monitoring test will consist of pressuring the annulus to a specified pressure no less than 50 PSIG and monitoring the positive annular pressure over a specified period of time. In determining whether to approve a monitoring test, and in establishing the test parameters (i.e., positive annulus pressure, tubing injection pressure, injection rate, monitoring method and length and frequency of monitoring), the Department shall consider well construction including:

A) the volume of the casing-tubing annulus;

B) depth of packer;

C) pressure below the packer; and

D) type of tubing and packer.

gh) Any Class II UIC well which fails an internal mechanical integrity test, or on which an internal mechanical integrity test has not been performed when required by subsection (d) and (e) above, shall be shut in until the well is plugged or until remedial work is completed and an internal mechanical integrity test is successfully completed. If the necessary work has not been completed and an internal mechanical integrity test successfully completed within ninety (90) days (or

within any greater length of time established by the Department due to weather conditions), the well shall be temporarily abandoned in accordance with Section 240.1130(d) of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.795 Commercial Saltwater Disposal Well

a) Only Class II fluids, as defined in Section 240.10, shall be disposed of into a Commercial Saltwater Disposal Well, or stored at a commercial saltwater disposal facility.

b) All Class II fluids being stored at a Commercial Saltwater Disposal Well Facility shall be stored in either leak free steel or fiberglass tanks or concrete storage structures. All tanks and concrete storage structures shall be constructed and maintained in accordance with Section 240.810 and 240.850.

c) The permittee of the Commercial Saltwater Disposal Well, or a permitted liquid oilfield waste transporter, shall be present when Class II fluids are being delivered to the facility.

d) All Commercial Saltwater Disposal Well Facilities shall be surrounded by a fence of at least four (4) feet in height above ground level and a gate with a lock to restrict access to the facility. The facility must be kept locked from 11:00 p.m. to 5:00 a.m.

e) Accurate records shall be maintained by the permittee of the Commercial Saltwater Disposal Well, or his authorized representative, of all Class II fluids delivered to the facility. These records shall include all of the following:
   1) the name of the permittee from which the fluid is delivered;
   2) the date of delivery;
   3) the number of barrels of fluid delivered;
   4) the name and location of the lease from which the fluids were produced; and
   5) the name and vehicle permit number of the Liquid Oilfield Waste Hauler delivering the fluid.

   These records shall be maintained at the facility or principal place of business for a minimum of three (3) years and shall be made available for inspection by a Department representative upon request.

f) Upon request by a representative of the Department, a sample of Class II fluid from the facility shall be analyzed to Determine fluid quality prior to injection. The samples shall be analyzed for at least the following parameters: pH, Total Dissolved Solids, Chloride, and Specific Gravity. If deemed necessary for the protection of the environment, the Department may request the samples be analyzed for additional constituents.

(Source: Added at 19 Ill. Reg. _____, effective _____)

SUBPART H LEASE OPERATING REQUIREMENTS

Section 240.820 Flowlines

a) All flowlines used in the production of oil and/or natural gas, constructed after ~~the effective date of this rule~~ November 8, 1993, shall be buried at least thirty-six (36) inches below the ground surface. The flowline shall be exempt from these burial requirements if made of steel and either of the following conditions exist:
   1) the topographical features, land uses or ground conditions prevent the efficient burial of flowlines; or
   2) the terms of the oil and gas lease prohibit the burial of flowlines.

b) The Department shall have the authority to take enforcement action (pursuant to Sections 240.140 through 240.170 of this Part) requiring flowlines existing on the effective date of this rule to be replaced or buried if the Department finds, based on field observation, that the flowlines constitute a hazard to public safety or can reasonably be expected to cause damage to the environment through leaks and spills.

c) No flowline conveying produced water shall have an outlet valve for the discharge of produced water between the place or well of origin and the authorized storage or disposal point.

d) Any spill from a flowline leak shall be cleaned up in accordance with Sections 240.890 and 240.895.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.830 Power Lines

a) All power lines installed after November 8, 1993 shall be buried at least thirty-six (36) inches below the ground surface or elevated on power poles at a height sufficient for farm machinery to pass underneath, not to exceed to eighteen (18) feet above the ground surface.

b) The Department shall have the authority to take enforcement action (pursuant to Sections 240.140 through 240.170 of this Part) requiring powerlines existing on November 8, 1993 to be elevated to a minimum of fourteen (14) feet or buried in accordance with subsection (a) above, if the Department finds, based on field observation, that the powerlines constitute a hazard to public safety.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.850 Concrete Storage Structures

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a) The requirements of this Section apply to:
   1) All concrete storage structures existing on ~~the effective date of this Section that~~ July 1, 1995 which will continue to be used.
   2) Any new concrete storage structures constructed after ~~the effective date of this Section~~ May 13, 1994.

b) ~~Definition~~ Definitions
"Concrete Storage Structure", as used in this Section, is a formed concrete impoundment, the base of which is at or below ground level, used for temporary storage of liquid oilfield waste or produced water prior to disposal.

"New Concrete Storage Structure" means a concrete storage structure permitted and constructed after May 13, 1994.

"Existing Concrete Storage Structure" means a concrete storage structure constructed prior to May 13, 1994.

c) Concrete Storage Structure Permitting Procedures
All new concrete storage structures constructed after May 13, 1994 are required to be permitted and may not be used until the permit is issued. All existing concrete storage structures constructed prior to May 13, 1994 must be permitted by July 1, 1995 or restored in accordance with subsection (e) below. ~~within six (6) months after the effective date of this Section.~~ The permittee shall apply for a permit on a form prescribed by the Department which shall include the following:
   1) A map drawn to scale showing the location of the concrete storage structure relative to the lease boundaries, potable water wells and local surface drainage located within 1/4 mile of the proposed structure.
   2) Concrete storage structure dimensions.
   3) Soil types in the area of concrete storage structure construction.
   4) Chemical analysis of produced water to be temporarily stored in the concrete storage structure showing TDS and chlorides.
   5) A description of the method for disposal of the produced water or liquid oilfield waste temporarily stored in the concrete storage structure.

d) General ~~Concrete Storage Structure~~ Location and Construction Requirements for New and Existing Concrete Storage Structures
   1) ~~No~~ New concrete storage ~~structure~~ structures shall not be located:
      A) within two hundred (200) feet of an existing inhabited structure, unless the current owner of the structure has provided a written waiver consenting to the construction closer than two hundred (200) feet. Any concrete storage structure located closer than two hundred (200) feet shall be completely fenced to prevent unauthorized access;

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      B) within two hundred (200) feet of a domestic water supply well or twenty-five hundred (2,500) feet of a municipal water supply well;
      C) within two hundred (200) feet of a stream, body of water, or marshy land, unless the permittee can demonstrate to the Department that construction standards or topography will prevent discharge from the concrete storage structure;
      D) in an area which is subject to annual flooding by streams, rivers, lakes, or drainage ditches.
   2) Existing concrete storage structures shall be completely fenced to prevent unauthorized access when located, at the time of permitting, within 200 feet of an existing inhabited structure.
   ~~2~~3) Surface water drainage shall be diverted away from ~~the~~ all concrete storage ~~structure~~ structures.
   ~~3~~4) ~~Concrete storage structure contents~~ Contents from any concrete storage structure shall not be discharged onto the surrounding land surface or into a stream or other body of water unless a permit has been obtained from the Illinois Environmental Protection Agency ("IEPA").
   ~~4~~5) The concrete storage structure permit number and the name of the permittee must be posted at ~~the~~ all concrete storage ~~structure~~ structures in a legible and visible manner.
   ~~5~~6) All concrete storage structures shall be covered with bird netting or other system designed to keep birds and flying mammals from landing in the concrete storage structure.
   ~~6~~7) New ~~Concrete~~ concrete storage structures~~, constructed after May 15, 1994,~~ shall be constructed utilizing standard engineering practices using formed concrete bottom and sides and be underlain by a drainage system constructed to allow the monitoring and sampling of fluids present under the structure. After installation of the concrete liner and prior to concrete storage structure use, the structure shall be inspected by a Department Well Inspector. The permittee shall correct damages or imperfections before placing liquid oilfield waste or produced water in the concrete storage structure. The fluid drainage from beneath the pit shall be sampled quarterly. The sample shall be analyzed for chlorides by an "independent testing" facility. The results of the analysis shall be maintained at the facility offices for review upon request, by the Department. If the fluid analysis indicates a leak is present, the Department shall be notified within five (5) days and the pit shall be drained and repaired.
   ~~7~~8) ~~After installation of the concrete liner and prior to concrete storage structure use, the structure shall be inspected by a Department Well inspector. The permittee shall correct damages or imperfections before placing liquid oilfield waste or produced water in the concrete storage structure.~~ Existing concrete storage structures shall have been constructed utilizing standard

engineering practices using formed concrete bottoms and sides. Existing concrete structures shall be exempt from the under structure drainage provision specified in (7) above for new structures. However, existing structures shall be subject to inspection and repair in accordance with Section 240.850(f) of this subpart.

~~8~~9) Puncturing or perforating the concrete liner or installing any type of drainage system which penetrates the sides or bottom of any structure is prohibited.

e) Concrete Storage Structure Abandonment and Restoration

1) Prior to removal and or burial of the concrete storage structure:

A) ~~The free liquid fraction~~ All of the liquid oilfield waste shall be removed and disposed of in a Class II UIC well.

B) Crude oil bottom sediments shall be disposed of in accordance with ~~Section~~ Sections 240.940(a) and (b) of this Part.

C) For new and existing concrete storage structures permitted in accordance with this Subpart and restored after July 1, 1995, the pit ~~Pit~~ residue shall be removed from the site and disposed of at an Illinois Environmental Protection Agency permitted non-hazardous special waste landfill~~.~~ provided that concrete storage structures residue containing NORM may be required to be disposed of at a waste facility permitted by the Illinois Department of Nuclear Safety.

D) For existing concrete storage structures not permitted for continued use in accordance with this Subpart by July 1, 1995, and required to be restored, or permitted existing pits restored by July 1, 1995, the pit residue can be buried on site within the concrete structure.

2) If the base of the structure is less than three (3) feet below the ground surface, the structure must be completely dismantled and removed from the site. The surface area shall be leveled and restored in such a manner as to prevent the ponding of water and erosion.

3) If any portion of the structure is below the ground surface, the portion of the structure within three (3) feet of the surrounding surface shall be removed. Any remaining structure must be configured to prevent the accumulation of water within the remaining structure and backfilled to prevent surface ponding and subsidence.

f) Inspection of Concrete Storage Structure

All new ~~or newly permitted~~ and existing concrete storage structures shall be subject to inspection by a Department Well Inspector. If requested at time of the inspection, the concrete storage structure shall be emptied in order to examine the integrity of the structure. The Department may order any remedial work it deems necessary to ensure compliance with Department regulations.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.860 Pits

a) "Pit", as used in this Section, is a synthetic lined or unlined earthen surface impoundment, whether a man-made excavation or a diked area, used for temporary storage of liquid oil field waste or produced water prior to disposal.

b) Construction of pits other than those specified in Subparts E and K of this Part is prohibited.

c) All pits in existence on May 13, 1994 shall be closed by July 1, 1995 as follows, unless exempted in accordance with Section 240.861 of this Part:

1) All pits without synthetic liners shall be restored in accordance with subsection (d) below.

2) Unpermitted synthetic lined pits shall be restored in accordance with subsection (d) below.

3) Pits with leaking or torn liners shall be restored in accordance with subsection (d) below.

4) Permitted synthetic lined pits that are not torn or leaking shall be restored in accordance with subsection (d) below within five (5) years from the Department's pit permit date.

5) Synthetic lined pits permitted more than five (5) years ago shall be restored in accordance with subsection (d).

d) Pits shall be restored as follows:

1) All liquid oilfield waste shall be removed and disposed of in a Class II UIC well.

2) Crude oil bottom sediments shall be disposed of in accordance with Section 240.940(a) and (b).

3) For pits required to be closed by July 1, 1995 and not exempted in accordance with Section 240.861, the ~~The~~ pit residue and liner, if any, shall either be:

A) removed from the site and disposed of at an Illinois Environmental Protection Agency permitted non-hazardous special waste landfill, provided that pit residue or liner containing NORM with radioactivity levels exceeding background may be required to be disposed of at a waste facility permitted by the Illinois Department of Nuclear Safety; or

B) consolidated from the sides to the bottom of the pit and covered in place with a clay or synthetic liner sufficient to impede the infiltration of surface water and placed at least five (5) feet below the ground surface. The pit shall be backfilled and the pit residue covered with 5' of soil having a radioactivity level at or below background level with the upper most 18" consisting of clean soil not contaminated by oilfield brine or crude oil. The backfilled

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area shall be graded to promote runoff with no depressions that would accumulate or pond water on the surface. The stability of the backfilled pit shall be compatible with the adjacent land use. The surface area over the backfilled pit area shall be stabilized to prevent erosion.

C) The Department shall prepare an inventory identifying, by county, all closed and unclosed liquid oilfield waste or produced water storage pits. The Department shall file such notice in the county clerk's office in the county in which such pits are located. The notice shall specify the location of the pit, generally identify the nature of the materials buried and, if known, specify the radioactivity level of the material buried. If the radioactivity is not known, the notice shall specify that the buried oil and gas waste may contain Naturally Occurring Radioactive Material (NORM).

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.890 Crude Oil Spill Clean-Up Requirements

a) All crude oil spills, which occur after ~~the effective date of this rule~~ November 8, 1993, regardless of amount, from wells, flowlines, tanks, concrete storage structures, pits or containment dikes, shall as soon as practicable be contained using earthen dikes, booms and other containment measures to minimize the amount of area affected by the spill.

b) Impounded free oil shall be picked up and put in lease storage tanks or removed from the site.

c) Remaining oil on the land surface shall be removed using absorbent material, which shall be disposed in accordance with Section ~~240.950~~ 240.891 of this Part.

d) In determining whether the Department will require additional remedial cleanup action to be taken by the permittee, which may include flushing of the area with fresh water, the addition of organic material (e.g. peat moss, straw), additional chemical treatment and disking the soil, the following factors shall be taken into consideration based on information provided by the permittee upon the Department's request.

~~d~~e) If a spill leaves the immediate lease area and enters a public road ditch, visible oil-contaminated soil shall be removed from the roadside ditch, spread over the area affected by the spill and incorporated in accordance with Section ~~240.950~~ 240.891 of this Part.

~~e~~f) If a spill enters surface waters, the spill shall be contained with booms and/or underflow dams and removed as expeditiously as possible. If it is determined that burning the oil-affected area will prevent further contamination of the surface waters, an emergency burn permit

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shall be sought from the IEPA, in accordance with Section ~~240.950(e)~~ 240.891 of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.891 Crude Oil Spill Waste Disposal

a) On Site Disposal of Contaminated Soil

1) The soil affected by a spill shall be at a minimum:

A) fertilized with 5 pounds of 12-12-12 fertilizer or an amount of other fertilizer sufficient to treat the soil with 0.25 lbs of nitrogen per 100 square feet of affected area;

B) limed with at least 50 lbs of agricultural grade lime per 100 square feet of affected area in order to maintain a pH of between 6-8; if the pH of the soil/oil mixture is less than 6, additional lime shall be incorporated to increase pH above 6;

C) tilled to a depth of at least four (4) inches but no greater than twelve (12) inches to create a soil and crude oil mixture which is less than 5% total petroleum hydrocarbon (TPH) as determined using Environmental Protection Agency Method 418.1;

D) watered to maintain soil moisture sufficient to promote plant growth (if extremely dry soil conditions exist); and

E) stabilized to minimize erosion and run-off of stormwater.

2) If the soil in the affected area is frozen or previously saturated due to rain or snow melt, prohibiting compliance with subsection (a)(1)(A) through (D) above, the permittee shall stabilize the area to prevent any surface run-off from leaving the affected area until conditions permit compliance with subsection (a)(1)(A) through (D) above.

3) The soil affected by the spill may be required to be tested by the Department one year later using Environmental Protection Agency Method 418.1. The soil and crude oil mixture must be less than 1% total petroleum hydrocarbon (TPH).

b) Contaminated soils removed from the site for off-site disposal shall be disposed of at an Environmental Protection Agency permitted special waste landfill, waste treatment or disposal facility.

c) Contaminated Absorbent Materials

1) Off-site disposal

All non-organic/non-biodegradable absorbent materials and all organic/biodegradable materials in excess of five hundred (500) cubic feet shall be disposed of at an Environmental Protection Agency permitted non-hazardous special waste landfill, waste treatment or disposal facility. Organic/biodegradable materials amounting to less than five hundred (500) cubic feet may be disposed of at a permitted non-hazardous special waste landfill or disposed of in accordance with

subsection (c)(2)(B) below.

2) On-site disposal

A) On-site disposal of non-organic/non-biodegradable absorbent materials is prohibited. These materials must be removed in accordance with subsection (b)(1) above.

B) On-site disposal of less than five hundred (500) cubic feet of organic/biodegradable absorbent materials through landspreading is permitted if it involves only materials generated at the site.

C) Landspreading absorbent materials shall comply with subsection (a) above.

d) Emergency Burning

1) Open burning of spilled crude oil and/or absorbent material is permitted when imminent weather conditions threaten to further contaminate surface waters or immediate collection for disposal is impractical.

2) Burning shall only be permitted when conditions will not cause the burn to affect nearby residences or the visibility on nearby roads.

3) Approval must be received from the Illinois Environmental Protection Agency prior to the emergency burn, and appropriately designated Illinois Department of Mines and Minerals personnel must be on the scene throughout the burn.

4) The local fire department shall be notified, if the burn is near a town or city.

5) A report must be filed with the Illinois Environmental Protection Agency within ten (10) days after the burn, indicating:

A) the place and time of the burn;

B) the quantity burned;

C) meteorological conditions; and

D) the reason the emergency burn was necessary.

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.895 Produced Water Spill Clean-Up Requirements

a) All spills of produced water, which occur after ~~the effective date of this Section~~ November 8, 1993, from wells, flowlines, pits, concrete storage structures, tanks or containment dikes, shall as soon as practicable be contained using earthen dikes and other containment measures to minimize the amount of area affected by the spill.

b) All impounded produced water shall be picked up and removed from the site for disposal into a Class II UIC well. The area shall then be immediately flushed with fresh water in an amount equal to the spill.

c) In determining whether the Department will require additional remedial cleanup action to be taken by the permittee, which may include ~~additional~~ flushing of the area with fresh water, the addition of

organic material (e.g. peat moss, straw), additional chemical treatment and disking the soil, the following factors shall be taken into consideration based on information provided by the permittee upon the Department's request:

1) the quantity and areal extent of the spill;

~~2) the chloride content of the spill material;~~

32) the nature ~~and chloride~~ content of the soil;

43) the flow capacity of affected waterways; ~~and~~

4) the public safety; and

5) the proximity of domestic or livestock fresh water supplies.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART I - LIQUID OIL FIELD ~~WASTE AND SPILL RELATED~~ WASTE HANDLING AND DISPOSAL

Section 240.930 Produced Water

a) All produced water collected for temporary storage shall be placed in tanks or permitted concrete storage structures in accordance with Subpart H of this Part. Containment dikes around tanks shall not be used for storage of produced water.

b) Except as provided in subsection (c) below, all produced water shall be transported by flowlines or a licensed liquid oilfield waste hauler to a permitted Class II UIC well for disposal.

c) Produced water shall not be disposed of into any ~~river, stream, lake, pond~~ surface water or water drainage way or onto the land surface unless an NPDES or surface discharge application permit has been obtained from the Illinois Environmental Protection Agency ("IEPA").

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.940 Crude Oil Bottom Sediments

a) Crude oil bottom sediments removed from tanks, concrete storage structures and pits on a lease or unit can be transported by a permitted liquid oilfield waste hauler to ~~a~~ an Illinois Environmental Protection Agency (IEPA) licensed special waste landfill, to ~~a~~ an IEPA licensed land off-site treatment facility, to a class II injection well for disposal or to a crude oil bottom sediment recycling facility; or

b) Bioremediated on-site through land spreading and chemical treatment is allowed under an IEPA waste disposal permit.

bc) Crude oil bottom sediments removed from tanks, pits or concrete storage structures on a lease or unit can only be used for road oiling on the lease or unit where the sediments were generated under the

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following conditions:

1) The permittee shall apply for and receive a lease road oiling permit for each lease or unit from the Department on a form prescribed by the Department prior to oiling any lease road.
2) Application for a lease road oiling permit shall include:
   A) the location of the lease or unit;
   B) the permittee's name and address;
   C) the method to be used for application of the bottom sediments;
   D) a map showing the lease roads to be oiled and the location of any surface waters on or immediately adjacent to the lease or unit; and
   E) written consent from the current surface owner or owners allowing the bottom sediment application.
3) Upon approval, crude oil bottom sediment shall be applied to lease roads in such a fashion as to avoid run-off during application onto immediately adjacent land areas. Immediately following completion of the application, all liquids shall be incorporated or otherwise absorbed into the soil with no visible free standing oil.
4) No lease road shall be oiled more than twice yearly.
5) Lease road oiling shall not be conducted when the ground is frozen or during rainy weather and shall not be allowed in areas subject to frequent flooding.
6) Crude oil bottom sediments used for lease road oiling shall not have a produced water content of greater than 10% free water by volume.
7) Lease road oiling permits shall be issued for each lease or unit and shall be valid for as long as the lease or unit is active and the provisions of this Section are complied with.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.950 Crude Oil Spill Waste Disposal (Repealed)

~~a) Contaminated Soil~~
~~1) The soil affected by a spill shall be:~~
~~A) fertilized with 5 pounds of 12-12-12 fertilizer or an amount of other fertilizer sufficient to treat the soil with 0.25 lbs of nitrogen per 100 square feet of affected area;~~
~~B) limed with at least 50 lbs of agricultural grade lime per 100 square feet of affected area in order to maintain a pH of between 6-8; if the pH of the soil/oil mixture is less than 6, additional lime shall be incorporated to increase pH above 6;~~
~~C) tilled to a depth of at least four (4) inches but no greater than twelve (12) inches to create a soil and crude oil mixture which is less than 5% total petroleum hydrocarbon (TPH) as determined using Environmental Protection Agency Method 418.1;~~
~~D) watered to maintain soil moisture sufficient to promote plant growth (if extremely dry soil conditions exist); and~~
~~E) stabilized to minimize erosion and run off of stormwater.~~
~~2) If the soil in the affected area is frozen or previously saturated due to rain or snow melt, prohibiting compliance with subsection (a)(1)(A) through (D) above, the permittee shall stabilize the area to prevent any surface run off from leaving the affected area until conditions permit compliance with subsection (a)(1)(A) through (D) above.~~
~~3) The soil affected by the spill shall be tested one year later using Environmental Protection Agency Method 418.1. The soil and crude oil mixture must be less than 1% total petroleum hydrocarbon (TPH).~~
~~b) Contaminated Absorbent Materials~~
~~1) Off site disposal~~
~~All non organic/non biodegradable absorbent materials and all organic/biodegradable materials in excess of five hundred (500) cubic feet shall be disposed of at a permitted non hazardous special waste landfill. Organic/biodegradable materials amounting to less than five hundred (500) cubic feet may be disposed of at a permitted non hazardous special waste landfill or disposed of in accordance with subsection (b)(2)(B) below.~~
~~2) On site disposal~~
~~A) On site disposal of non organic/non biodegradable absorbent materials is prohibited. These materials must be removed in accordance with subsection (b)(1) above.~~
~~B) On site disposal of less than five hundred (500) cubic feet of organic/biodegradable absorbent materials through landspreading is permitted if it involves only materials generated at the site.~~
~~C) Landspreading absorbent materials shall comply with subsection (a) above.~~
~~c) Emergency Burning~~
~~1) Open burning of spilled crude oil and/or absorbent material is permitted when imminent weather conditions threaten to further contaminate surface waters or immediate collection for disposal is impractical.~~
~~2) Burning shall only be permitted when conditions will not cause the burn to affect nearby residences or the visibility on nearby roads.~~
~~3) Approval must be received from the Department prior to the emergency burn, and Department personnel must be on the scene throughout the burn.~~
~~4) The local fire department shall be notified, if the burn is near a town or city.~~

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~~5) A report must be filed with the Illinois Environmental Protection Agency within ten (10) days after the burn, indicating:~~
~~A) the place and time of the burn;~~
~~B) the quantity burned;~~
~~C) meteorological conditions; and~~
~~D) the reason the emergency burn was necessary.~~

(Source: Repealed at 19 Ill. Reg. _____, effective _____)

Section 240.1000 Definitions

Vacuum--means pressure which is reduced below the pressure of the atmosphere.

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.1005 ~~Requirements for Use of Vacuum Pumps~~ Applicability

~~The use of vacuum pumps or other devices for creating a vacuum or any oil or gas producing stratum is hereby prohibited until the owner or manager has complied with the following requirements:~~ The provisions of this Subpart apply to vacuum pumps or other devices used on oil and gas production wells for creating a vacuum in any oil or gas well. Any well with a vacuum pump existing at the time of the adoption of these rules shall apply for a permit within six (6) months after adoption of the rules.

(Source: Section repealed, new Section added at 19 Ill. Reg. _____, effective _____)

Section 240.1010 ~~Application for Use of Vacuum~~ Application for Vacuum Permit

~~On or before the date of filing an application by letter for use of vacuum on any leasehold the applicant shall notify, by registered mail, all other persons owning or managing producing oil or gas wells located within one half (1/2) mile radius of the well or wells where the use of vacuum is proposed, and shall set out in the notice the proposed strata or formation and exact location of the well or wells to be affected by the application or use of such vacuum. The applicant shall submit proof of such notice with the application, giving the names and addresses of all well owners or managers within such one half (1/2) mile radius.~~

a) No person shall use a vacuum device on any oil and or gas production well without a permit from the Department.

b) Application for a permit to use a vacuum device shall be made on forms prescribed by the Department and executed under penalties of perjury.

c) If the application does not contain all of the required information or documents, the Department shall notify the applicant in writing. The

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notification shall specify the deficiency of the application, and shall advise the applicant that the application will be deemed denied unless the required information or documents are submitted within sixty (60) days following the date of notification.

(Source: Section repealed, new Section added at 19 Ill. Reg. _____, effective _____)

Section 240.1020 ~~Notice and Hearing on Application~~ Contents of Application

~~a) On receipt of such application and proof of notice, the Mining Board shall hold the same for ten (10) days pending the filing of objections, and if none is received at the end of such period, the application may be approved by the Mining Board.~~
~~b) In event objection is made by the owner or manager of any well or wells producing from the same formation, which are located within one half (1/2) mile radius of the proposed vacuum installation, and the Mining Board deems a hearing shall be had, notice shall be given to each objector and the applicant, of the time and place designated by the Mining Board for such hearing.~~

The application for a permit to use a vacuum device on a production well shall include:

a) the name and address of the Permittee;
b) the name of the well;
c) the legal location of the well;
d) the names and depths of the formations subject to a vacuum;
e) a map showing:
1) the boundaries of the leasehold or enhanced oil recovery unit in which the vacuum device will be located;
2) the exact location of the well on which the vacuum device will be installed;
3) the location of all unplugged production wells on the lease or unit;
4) the names of all permittees of producing lease holds within 1/4 mile of the well on which the vacuum device will be located; and
5) the location of all offset production wells located within 1/4 mile of the well on which the vacuum device will be located.
f) Submit evidence of Notice required under Section 240.1040.

(Section repealed, new Section added at 19 Ill. Reg. _____, effective _____)

Section 240.1030 ~~Mining Board Authority~~ Authority of Person Signing Application

~~a) The Mining Board shall have authority after notice and hearing to prohibit vacuum or to deny or revoke permission for the use of vacuum when, in its judgment, there is danger of underground waste.~~

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~~b) The Mining Board shall have authority to grant permission when it believes a further recovery of oil can be obtained by use of vacuum without danger of underground waste.~~

a) The application for a vacuum permit shall identify whether the applicant is an individual, partnership, corporation or other entity, and shall contain the address and signature of the owner or person authorized to sign for such owner.

b) If the owner is an individual, the application shall be signed by the individual. If the owner is a partnership, the application shall be signed by a general partner. If the owner is a corporation, the application shall be signed by an officer of the corporation.

c) In lieu of the signature of the owner or such authorized person, the application may be signed by a person having a power of attorney to sign for such owner or authorized person, provided a certified copy of the power of attorney is on file with the Department or accompanies the application.

d) The entity or person to whom the permit is issued shall be called the Permittee and shall be responsible for all regulatory requirements.

e) If the applicant is a corporation, the charter must authorize the corporation to engage in the permitted activity, and the corporation must be incorporated or authorized to do business in the State of Illinois.

(Source: Section repealed, new Section added at 19 Ill. Reg. _____, effective _____)

Section 240.1040 Notice and Hearing

a) On or before the date of filing a Vacuum Permit application with the Department, the applicant shall notify, by Certified Mail - return receipt requested, all other permittees operating oil or gas production wells within a 1/4 mile radius of the well where the use of vacuum is proposed.

b) The Notice shall contain:
   1) Name and depths of the formations on which vacuum will be applied;
   2) the exact location of the well or wells to be affected by the use of such vacuum;
   3) the address and telephone number of the Oil and Gas Division of the Department; and
   4) a statement that the public has fifteen (15) days, from the date postmarked on the Notice, to comment on the application and that comments must be made in writing to the Department.

c) Objections
   If a written objection to the application is filed within fifteen (15) days after the date postmarked on the Notice, the Department shall consider the objection in determining whether the permit should be issued. If the objection raises a factual or legal question regarding

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the sufficiency of the application in meeting the requirements for a permit or presents data indicating correlative rights may not be protected, the permit objection shall be set for a public hearing. A hearing shall be set only after all other requirements for issuance of the permit have been fulfilled.

d) Public Hearing
   1) Any public hearing held pursuant to subsection (c) above shall be conducted by the Department solely for the purpose of resolving the factual, legal or correlative rights questions raised by the objection;
   2) notice of the hearing shall be sent by the Department to the applicant and to the objector by mailing such notice by United States mail, postage prepaid, addressed to their last known home address;
   3) a certified court reporter shall record the hearing at the Department's expense;
   4) a Hearing Officer designated by the Department shall conduct the hearing. The Hearing Officer shall allow all parties to the hearing to present evidence in any form, including by oral testimony or documentary evidence, unless the Hearing Officer determined such evidence is irrelevant, immaterial, unduly repetitious, or of such nature that reasonably prudent members of the public or people knowledgeable in the oil and gas field would not rely upon it in the conduct of their affairs;
   5) the Hearing Officer shall have the power to continue the hearing or to leave the record open for a certain period of time in order to obtain or receive further relevant evidence;
   6) after receipt of the transcript of the hearing, the Department shall render a decision on the objection.

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.1050 Issuance of Permit

a) If the applicant satisfies the requirements of the Act and Rules, the Department shall issue a permit fifteen (15) days after the postmark date on the Notice sent to adjacent Permittees in accordance with 240.1040(a) of this Subpart.

b) A permit shall not be issued where a final administrative order of the Department is outstanding against the applicant or against a person or permittee who is an officer, director, partner or owner of more than a 5% interest of the applicant.

c) Permits are valid for the life of the well and are automatically transferred when the well is transferred in accordance with Subpart N.

d) A permit shall not be issued if after notice and hearing the Department determines the issuing of a vacuum permit will not protect the correlative rights of adjacent permittees.

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e) If through field investigation by the Department, or upon written request by a Permittee within 1/4 mile of an existing well with a vacuum permit, the Department determines correlative rights of adjacent permittee are not a protected, the existing permit may be revoked after hearing and notice in accordance with Section 240.1030(d) of this Subpart.

(Source: Added at 19 Ill. Reg. _____, effective _____)

Section 240.1060 Permit Amendments

a) The permittee shall not expose an unpermitted reservoir to vacuum without obtaining a permit amendment from the Department.
b) The permittee shall make application for an amendment on a form prescribed by the Department.
c) The permittee shall be in compliance with Section 240.1040 of this Subpart prior to issuance of the Permit Amendments.

(Source: Added at 19 Ill. Reg. _____, effective _____)

SUBPART K - PLUGGING OF WELLS

Section 240.1110 Definitions

For the purpose of this Subpart, the term:

"Cased Well" means a well in which production casing has been set.

"Cement" means class A neat cement with a minimum weight of fifteen and six tenths (15.6) pounds per gallon, unless the cement contains additives which improve the ability of the cement to provide necessary protection and which maintains a minimum compressive strength of 500 PSI after 72 hours.

"Circulation Method" means placement of cement used in plugging a well by circulating cement through a pipe set at a specified depth in the well.

"Dump Bailer Method" means placement of cement used in plugging a well by using a dump bailer on a wire line.

"Inactive Well" means a well that has ceased operation for a period of up to twenty-four (24) consecutive months.

~~"Mechanical Plug" means a cast iron bridge plug or retrievable plug.~~

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"Mud" means a drilling mud with a minimum Marsh Funnel viscosity of forty-five (45) seconds. Mud may contain water (fresh or brine), Bentonite, Attapulgite or other additives if they do not reduce the viscosity below forty-five (45) seconds.

"Plugging Fluid Waste" means plugging fluids, including cement, that are generated from the well during plugging activities.

"Uncased Well" means a well in which production casing has not been set.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1130 Plugging or Temporary Abandonment of Inactive Wells and Certain Class II UIC Wells

a) Any inactive well which has not been in operation for 24 consecutive months shall be deemed abandoned, in accordance with Section 240.1600(c) of this Part, and plugged in accordance with Section 240.1140 of this Part unless the well has been temporarily abandoned in accordance with subsection (d) below.
b) Any Class II UIC well(s) without tubing and packer shall be plugged in accordance with Section 240.1140 of this Part unless the well has been temporarily abandoned in accordance with subsection (d) below.
c) The permittee may request temporary abandonment status by making written application on forms provided by the Department. The Department shall place the well on temporary abandonment status and issue a Future Use Permit, if the well meets the following conditions (which shall be continuing requirements):
   1) The well shall have proper bond in effect in accordance with the Act, the permittee must not be delinquent in payment of any annual well fee assessment. ~~and any final administrative decision of the Act relating to the well must be abated.~~
   2) The well shall have an intact leak free wellhead or be capped with a valve, and configured to monitor casing or annual pressure.
   3) If the well is an injection well, all injection lines shall be disconnected at the well.
   4) If the well is a permitted gas well and the well has gas at the surface, the requirements of (c)(6) and (7) below do not apply.
   45) The wellhead shall be above ground level.
   56) The fluid level is no higher than one hundred (100) feet below the base of the fresh water as evidenced by an annual fluid level test conducted by the permittee after notice to and under the supervision of the Department, using acoustical or wire line measuring methods. If the Department authorizes the permittee to conduct an annual fluid level test without the presence of a well

inspector, the permittee shall report the annual fluid level test on a form prescribed by the Department. The fluid level test shall be conducted annually during the period of temporary abandonment unless the permittee elects to satisfy the requirements of subsection ~~(6)~~(7)(B) or (C) below.

6~~7~~) If the fluid level, as tested, is higher than one hundred (100) feet below the base of the fresh water, the permittee, under the supervision of the Department, shall:

A) set a ~~mechanical bridge~~ cast iron plug within 200 feet above the perforated or open hole interval in the cemented portion of the casing, but no less than 100 feet below the base of the fresh water, remove any fluid to a level at least 100 feet below the base of the fresh water zone, and monitor the fluid level annually in accordance with subsection ~~(5)~~ (6) above; or

B) set a ~~mechanical bridge~~ cast iron plug within 200 feet above the perforated or open hole interval in the cemented portion of the casing, but no less than 100 feet below the base of the fresh water, and pressure test the casing by maintaining a pressure of 300 PSIG (which may vary no more than 5%) for a period of 30 minutes at least once every five (5) years during any period of temporary abandonment; or

C) install tubing and set a packer in accordance with the requirements of Section 240.740, and conduct and pass an internal mechanical integrity test in accordance with Section 240.760 of this Part.

d) If temporary abandonment request is denied, the permittee shall, within ninety (90) days, plug the well or secure temporary abandonment status.

e) Temporary abandonment status shall be granted for a five (5) year period. After the expiration of the five (5) year period, temporary abandonment status shall be granted on an annual basis. Temporary abandonment status shall not be extended or renewed for a Class II UIC well unless the well is tested in accordance with Section 240.760 of this Part.

f) A temporarily abandoned well shall not be operated until it is reactivated by notifying the Department on a form prescribed by the Department. In addition, if the well is an injection or disposal well, the well shall not be reactivated until tubing and packer is set and an internal mechanical integrity test is passed in accordance with Section 240.760 of this Part.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1140 General Plugging Procedures and Requirements

a) Notification of District Office

The permittee shall contact the District Office at least twenty-four (24) hours prior to plugging a cased well, or as soon as possible after determination has been made to plug an uncased well.

b) Well Drilling and Construction Data
For all cased wells, the permittee shall have a well log and the well completion report at the site for review by the well inspector at the scheduled time of plugging. If the permittee cannot locate well logs or the well completion report, the permittee shall make available at the site copies of any logs and well construction records maintained by the Illinois State Geological Survey. For all uncased wells, all available drilling and well construction information shall be at the well site for review by the well inspector at the time of plugging.

c) Foreign Material Prohibited
1) Except for an unavoidable loss of drilling or logging tools or procuring equipment, placing or lodging any material or substance~~,--other--than--those--authorized-to-be-used-in-plugging under-this-Subpart~~ in an unplugged well to either fill or bridge the hole for the purpose of avoiding proper plugging procedures is prohibited.
2) Foreign materials which have been placed in the hole shall be removed before plugging operations are commenced.

d) Plugging A Bridged Well
When a well becomes plugged or obstructed because of the loss of drilling or logging tools or producing equipment, which would be impractical to remove, the Department may vary the plugging requirements of this Section and specify alternative plugging requirements. In determining whether to approve and in selecting alternative plugging requirements, the Department shall consider the time and cost of removing lost tools or equipment, the potential for damage to fresh water and coal seams and the depth of the lost tools or equipment in relation to the depth of fresh water zones and coal seams, and well construction characteristics.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1150 Specific Plugging Procedures

a) Circulation of Cement
Cement may be circulated from total depth or plugged back total depth to surface in lieu of the placing of plugs specified in subsection (b),(c) and (d) below, provided both the workable coal and the fresh water zones have been protected by cement in direct contact with both strata.

b) Producing Interval Plug
1) Cased Wells
A) When using the Circulation Method, a cement plug shall be placed opposite each perforated interval, and each interval

that is exposed after removal of production casing which has produced oil or gas or into which injection is occurring within 1/4 mile radius of the well, and extend fifty (50) feet below the deepest perforated interval, total depth, or plugged back total depth, and extend to fifty (50) feet above the shallowest perforated interval or fifty (50) feet above the open hole interval.

B) When using the Dump Bailer Method, a ~~mechanical~~ cast iron plug shall be set immediately above each perforated interval, and each interval that is exposed after removal of production casing which has produced oil or gas or into which injection is occurring within 1/4 mile radius of the well, and a minimum of ten (10) feet of cement shall be placed on top of each mechanical plug. As an alternative to setting a cast iron plug, a standard cement pump down plug can be placed in the well and a minimum of fifty (50) feet of cement placed on top of each plug. To insure the cement plug has been properly set, the cement plug shall be tagged after a minimum of two (2) hours. The use of the cement pump down plug is prohibited if the well is flowing fluid to the surface.

2) Uncased Wells
Wells shall be filled with mud before commencement of plugging operations and a cement plug shall be placed opposite any exposed interval which has produced oil or gas or into which injection is occurring within 1/4 mile radius of the well. The cement plug shall extend from 50 feet below the exposed zone to fifty (50) feet above the zone. The cement plug may be placed using either the circulation or dump bailer method.

c) Coal plugs - A plug shall be placed across each workable coal seam in accordance with Section 240.1151 of this Part.

d) Surface Plug - Surface casing shall not be pulled from any well and a cement plug shall be placed across the fresh water zones using either the circulation or dump bailer method as follows:

1) Wells with surface casing

A) If surface casing extends fifty (50) feet below the fresh water zones with cement circulated to the surface, a cement plug shall be placed in direct physical contact with the strata and surface casing from twenty five (25) feet below the setting depth of the surface casing and extend to the surface. If production casing is left in the hole and there is no cement behind the production casing, cement shall be placed inside and outside of the production casing from twenty five (25) feet below the setting depth of the surface casing and extend to the surface. Cement shall be placed outside of the production casing by perforating the casing 25 feet below the setting depth of the surface casing and squeezing cement behind the production casing to the

surface, or by inserting tubing down the backside of the production casing to a depth of 25 feet below the setting depth of the surface casing and circulating cement to the surface.

B) If surface casing does not extend fifty (50) feet below the base of the fresh water zone, a continuous cement plug shall be placed in direct physical contact with strata from a depth of fifty (50) feet below the base of the fresh water zone to the surface. If production casing is left in the hole, and there is no cement behind the production casing, cement shall be placed inside and outside of the production casing from fifty (50) feet below the base of the fresh water zone and extend to the surface. Cement shall be placed outside of the production casing by perforating the casing 50 feet below the base of the fresh water zone and squeezing cement behind the production casing to the surface, or by inserting tubing down the backside of the production casing to a depth of 50 feet below the base of the fresh water and circulating cement to the surface.

2) Wells without a surface casing - A cement plug shall be placed from a depth of fifty (50) feet below the base of the fresh water zones to the surface.

e) Plugging Requirements for Wells with Uncemented Casings.
When the Department determines that the plugging procedures set forth in this Section cannot be followed due to well construction and the lack of cement behind the casings, the Department will authorize the following alternative plugging procedures:

1) the production casings shall be removed from a point at least fifty (50) feet below the base of the fresh water, the hole filled with mud, and a Surface Plug set in accordance with subsection (d) above;

2) if the production casings cannot be removed to a depth at least fifty (50) feet below the base of the fresh water, all casings contained within the outermost casing shall be removed to a depth at least fifty (50) feet below the base of the fresh water, and the outermost casing in direct contact with the borehole wall shall be perforated, ripped or parted at an interval 50 feet below the base of the fresh water to permit cement to infiltrate the annulus between the casing and the borehole wall. The hole shall be filled with mud, the perforated, ripped or parted interval shall be squeezed with cement, and a Surface Plug must be set in accordance with subsection (d) above.

3) if the well cannot retain mud because the producing interval takes fluid, the producing interval shall be covered with sand, crushed rock or other similar material to provide an anchor on which to place the column of mud, and the hole shall be filled with mud and a surface plug set in accordance with subsections (e)(1) or (2) above.

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(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART N: TRANSFER OF OWNERSHIP

Section 240.1400 Definitions

As used in this Subpart:

a) "Current Permittee" means the individual or entity required to hold the permit or to whom the permit has been issued and who is the owner of the right to drill and/or product said well(s), possesses the full rights and responsibilities for operating the well(s) in accordance with all requirements of the Illinois Oil and Gas Act [225 ILCS 725] ("Act") and has the current obligation to plug said well(s), who is the assignor, transferor (whether voluntary or involuntary) or seller of the well or wells.

b) "New Permittee" means the individual or entity acquiring the well or wells and the right to drill and/or produce said well(s), the full rights and responsibilities for operating the well(s) in accordance with the Act and the current obligation to plug said well(s), and who is required~~,-after-the-transfer,~~ to hold the permit.

c) "New base lease", as used in this Subpart, refers to a lease executed by the mineral owner and new permittee for a tract of land containing production and/or injection wells previously operated pursuant to a lease held by the current permittee.

d) "Operator" means the individual or entity controlling the right to drill and/or produce said well(s), has the full rights and responsibilities for operating the well(s) along with the obligation to ultimately plug said well(s) under an operating agreement with the owner(s) in interest.

e) "Operating Agreement" means a written document which conveys or grants the right to drill and/or produce certain well(s), along with the full rights and responsibilities for operating the well(s) as well as the current obligation to plug said well(s); requires the transferee or grantee to comply with all requirements of the Act including the payment of annual well fees; and requires the transferee or grantee to add said well(s) to the Operator's Annual Well Fee listing with the Department of Mines and Minerals by becoming the Permittee for the well(s).

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1410 Applicability

a) The provisions of this Subpart apply to all assignments, transfers (whether voluntary or involuntary) and sales of the interest of the individual or entity required to hold and to whom the permit is issued

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(Permittee), including:

1) a change of ownership of the right to drill and/or produce said well(s), along with the full rights and responsibilities for operating the well(s) in accordance with the Act and the obligation to ultimately plug said well(s) through assignment, voluntary release, corporate or other business takeover, buyout, merger or similar transaction, involuntary termination of lease rights by court order, new base lease, sale, gift, devise or other transfer; or

2) a change in the designation of the operator or manager under an operating or other similar agreement in which the owner of the right to drill and/or produce said well(s), along with the full rights and responsibilities for operating the well(s) in accordance with the Act and the obligation to ultimately plug said well(s) assigns that right;or

3) pursuant to the action of the owners of separate ~~in-interest~~ interests~~,-and~~ who designate an owner to be Permittee; or

~~3~~)4) the appointment, by a court of competent jurisdiction, of a trustee or a receiver to exercise custody and control over the well or wells.

b) The provisions of this Subpart shall not apply to the assignment, transfer or sale of royalty, overriding royalty or fractional working interests not affecting the rights or responsibilities of the permittee.

c) The provision of this Subpart shall also apply to administrative record correction transfers initiated by the Department in which the Department transfers the permit to a well to the person who is required to be the permittee for that well under the Act.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1430 Responsibilities of Current Permittee

a) The current permittee shall notify the Department of the assignment, transfer or sale, on a form prescribed by the Department unless the transfer was due to an involuntary termination of lease rights by court order. The new permittee shall notify the Department of an involuntary well transfer. A separate form shall be completed for each lease, well, or other unit assigned, transferred or sold. The notification shall be signed, under penalty of perjury, by the current permittee and by the new permittee, or their authorized representatives, and shall include:

~~a~~)1) the names and addresses of the current permittee and the new permittee;

~~b~~)2) the effective date of assignment, transfer or sale;

c) ~~copies-of-the-lease-assignment,-voluntary-release,-court-order involuntarily-terminating-a-lease,-or-other-documents-evidencing-the~~

~~assignment, transfer or sale to the new permittee of the right to drill and operate the well or wells on the lands in question;~~

~~d)~~3) the name, location, and permit number of all wells on the lease or other unit assigned, transferred or sold for which a permit has been issued; and

~~e)~~4) the location of any wells on the lease or other unit assigned, transferred or sold known to the current permittee for which no permit has previously been issued.

b) The current permittee shall submit to the Department, along with the notification of transfer, a copy of the instrument conveying the right to drill and produce. The document shall consist of:

1) a lease assignment properly recorded in the county where the lease is located;

2) a voluntary release executed by the lessee and properly recorded in the county where the lease is located;

3) a court order involuntarily terminating a lease; or

4) any other document evidencing the assignment, transfer or sale to the new permittee of the right to drill and operate the well(s) on the land in question.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1440 Responsibilities of New Permittee

Prior to the Department effecting the transfer, the ~~The~~ new permittee shall:

a) pay the required transfer fee;

b) provide the required bond, if applicable, in accordance with Subpart O;

c) if the new permittee is a corporation, provide evidence that the corporation is incorporated or authorized to do business in the State of Illinois, and authorized under its charter to engage in the permitted activity;

d) if the new permittee is an individual, partnership, or other unincorporated entity that is not a resident of Illinois, provide an irrevocable consent to be sued in Illinois; and

e) if requested by the Department, provide copies of the lease assignment, voluntary release, court order involuntarily terminating a lease, new base lease, or other documents evidencing the assignment, transfer or sale to the new permittee of the right to drill and operate the well or wells on the lands in question.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1460 Other Conditions for and Effect of Transfer

a) No permit shall be transferred to a new permittee:

1) who is delinquent in the payment of fees assessed under Section 19.7 of the Act;

2) on account of whom any amounts have been obligated from the Plugging and Restoration Fund that have not been reimbursed; or

3) against whom the Department has issued a final administrative decision that has not been abated or satisfied.

b) When the requirements of this Subpart have been satisfied, and subject to subsections (d) and (e) below, the Department shall render permit transfer decisions based upon the manner in which the new permittee came into possession of the wells sought to be transferred. Specifically:

1) a new permittee who is the mineral owner:
if the new permittee owns the mineral rights to the tract of land on which production or injection wells subject to a prior lease are located and came into possession of the right to operate such wells by virtue of a voluntary release or involuntary termination of lease rights by court order, this new permittee shall become responsible for all regulatory requirements relative to:

A) each production well identified in the new permittee's permit transfer application;

B) all wells in existence within the prior lease if the new permittee seeks to operate any of the injection wells located within this leasehold, convert any production well to an injection well or drill a new injection well; and

C) all pits, concrete storage structures, tank batteries and other surface production facilities in existence within the lease boundaries.

2) the new permittee is a new base lessee:
if the new permittee came into possession of the right to operate wells by virtue of a new base lease, this new permittee shall become responsible for all regulatory requirements relative to the wells identified within the lease document except that:

A) if the new permittee shall also become responsible for all regulatory requirements relative to the wells identified within the notification of transfer form submitted in accordance with Section 240.1430 of this Part; and

B) if the new base lease conveys the right to produce from all formations, and the new base lessee permits or operates any injection well located within the tract of land being leased, converts any production well to an injection well or drills a new injection well within this area, this new permittee shall become responsible for all regulatory requirements relative to all wells, concrete storage structures, pits and tank batteries in existence within such tract of land; or

C) if the new base lease conveys the right to produce from specified formations only, and the new base lessee permits or operates any injection well located within the formations

specified in the new base lease, converts any production well to an injection well or drills a new injection well to the specified formations, this new permittee shall become responsible for all regulatory requirements relative to all wells drilled to the same formation as the injection well, and all concrete storage structures, pits and tank batteries in existence relative to that formation.

3) a new permittee who is an assignee:
if the new permittee came into possession of the right to operate wells by virtue of a lease assignment, this new permittee shall become responsible for all regulatory requirements relative to all wells, concrete storage structures, pits and tank batteries in existence within the lease hold being assigned.

c) If any well, or any lease or other unit associated with the well, is in violation of the Act or rules at the time of the transfer to the new permittee. The new permittee shall be notified of its violations and the allotted time for abatement, at the time of transfer.

d) The transfer of a permit pursuant to this Subpart shall not affect the rights of the Department, or any obligation or duty of the current permittee arising under the Act and rules. Any cause of action accruing or any action or proceeding had or commenced, whether administrative, civil or criminal, may be instituted or continued without regard to the transfer of the permit in accordance with this Subpart.

e) A current or new permittee may request a hearing in accordance with Section 240.1490 to challenge a permit transfer. ~~if such hearing is requested in writing within fifteen (15) days after the permit transfer is mailed. If no hearing is requested in this time period, the permit transfer shall be a final administrative decision of the Department. If a hearing is requested by the current or new permittee, the hearing shall be scheduled within fifteen (15) days after the receipt of the request for hearing.~~

~~f) At the permit transfer hearing, the Department shall present evidence in support of this determination under subsection (b) above. Both the current and the new permittee may present evidence contesting the Department's determination under subsection (b) above. The hearing officer may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence.~~

~~g) Within thirty (30) days after the close of the record for the permit transfer hearing, the hearing officer shall issue recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case.~~

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 40.1480 Administrative Record Correction Transfer

a) The Department may administratively transfer a permit to a person required to be the permittee under the Act when the Department determines, based on its records and documents of title submitted to it, that the current permittee is not an owner of the well as defined in the Act.

b) The new permittee must satisfy the requirements of Section 240.1440~~(b)~~, (c) and (d).

c) Prior to operating the transferred wells the permittee must provide a bond in accordance with Section 240.1500(a)(1) and (2).

ed) Upon determination of an Administrative Record Correction Transfer, the Department shall notify the current and new permittees of the transfer which will be effective 30 days from the date of notice unless a hearing is requested in accordance with ~~subsection (d)~~ Section 240.1490 below.

~~d) A current or new permittee may request a hearing to challenge a pending permit transfer if such hearing is requested in writing within 30 days after the date of the transfer notice. All requests for hearing must be accompanied by documents evidencing basis for objection. If no hearing is requested in this time period, the permit transfer shall be a final administrative decision of the Department. If a hearing is requested by the current or new permittee:~~

~~1) A pre-hearing conference shall be held within fifteen (15) days after the receipt of the request for hearing.~~

~~A) A pre-hearing conference shall be scheduled in order to:~~

~~i) Simplify the factual and legal issues presented by the hearing request;~~

~~ii) Receive stipulations, admissions of fact and of the contents and authenticity of documents;~~

~~iii) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing;~~

~~iv) Set a hearing date; and~~

~~v) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion thereof.~~

~~B) Pre-hearing conferences may be held by telephone conference if such procedure is acceptable to all parties.~~

~~2) All hearings under this Subpart N shall be conducted in the Department's offices located at 300 West Jefferson Street, Suite 300, Springfield, Illinois.~~

~~e) At the permit transfer hearing, the Department shall present evidence in support of its determination under subsection (a) above. Both the current and the new permittee may present evidence contesting the Department's determination under subsection (a) above. The hearing officer may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence.~~

~~f) Within thirty (30) days after the close of the record for the permit~~

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~~transfer hearing, the hearing officer shall issue recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case.~~

~~g) The person or permittee's failure to request a hearing in accordance with subsection (c) shall constitute a waiver of all legal rights to contest the permit transfer decision. Within 30 days after the close of the hearing record or expiration of the time to request a hearing, the Department shall issue a final administrative decision, pursuant to Section 10 of the Act.~~

~~h) The Director shall review the administrative record in conjunction with the hearing officer's recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case. The Director shall then issue the Department's final administrative decision affirming, vacating or modifying the hearing officer's decision.~~

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1490 Transfer Hearings

a) A current or new permittee may request a hearing to challenge a permit transfer if such hearing is requested in writing within 30 days of the date of the transfer notice. All requests for hearing must be accompanied by documents evidencing basis for objection. If no hearing is requested in this time period, the permit transfer shall be a final administrative decision of the Department. If a hearing is requested by the current or new permittee:

1) A pre-hearing conference shall be held within fifteen (15) days of the receipt of the request for hearing.

A) A pre-hearing conference shall be scheduled in order to:

i) Simplify the factual and legal issues presented by the hearing request;

ii) Receive stipulations, admissions of fact and of the contents and authenticity of documents;

iii) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing;

iv) Set a hearing date; and

v) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion thereof.

B) Pre-hearing conferences may be held by telephone conference if such procedure is acceptable to all parties.

2) All hearings under this Subpart N shall be conducted by an impartial hearing officer not employed by the Department and shall be held in the Department's offices located in Springfield, Illinois.

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b) At the permit transfer hearing, the Department shall present evidence in support of its determination under subsection (a) above. Both the current and the new permittee may present evidence contesting the Department's determination under subsection (a) above. The hearing officer may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence.

c) Within thirty (30) days after the close of the record for the permit transfer hearing, the hearing officer shall issue recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case.

d) The person or permittee's failure to request a hearing in accordance with subsection (c) shall constitute a waiver of all legal rights to contest the permit transfer decision. Within 30 days of the close of the hearing record or expiration of the time to request a hearing, the Department shall issue a final administrative decision, pursuant to Section 10 of the Act.

e) The Director shall review the administrative record in conjunction with the hearing officer's recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case. The Director shall then issue the Department's final administrative decision affirming, vacating or modifying the hearing officer's decision.

(Source: Added at 19 Ill. Reg. _____, effective _____)

SUBPART O - BONDS

Section 240.1500 When Required, Amount and When Released

a) To Drill, Deepen, Convert or Operate an Oil or Gas Well

1) A bond, in the amount as herein provided, shall be submitted along with an application to drill, deepen, convert, operate or transfer a production or Class II well if:

A) such applicant was not an owner of the right to drill and produce in a well of record with the Department on September 26, 1991; or

B) such applicant was not a permittee of record on September 26, 1991; or

C) such applicant has had a bond forfeited; or

D) such applicant was not assessed an annual well fee as of July 1 ~~preceeding~~ preceding the application date~~; or~~ .

E) ~~the Department has issued a final, unappealed administrative decision citing the applicant for failing to pay fees assessed under Section 19.7 of the Act.~~ Such applicant has had wells plugged by the Department using funds from the Plugging and Restoration Fund.

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2) When a bond is required to be filed with the Department to drill, deepen, convert or operate an oil or gas well, the amount of the bond shall be:
   A) $1,500 for a well less than 2000 feet deep;
   B) $3,000 for a well 2,000 or more feet deep;
   C) $25,000 for up to 25 wells of a permittee;
   D) $50,000 for up to 50 wells of a permittee; or
   E) $100,000 for all wells of a permittee.
3) A bond submitted pursuant to Section 240.1500(a) shall be released when:
   A) all wells covered by the bond are plugged and restored in accordance with Subpart N of these rules; or
   B) all wells covered by the bond are transferred in accordance with Subpart N of these rules; or
   C) the permittee has paid assessments to the Department in accordance with Section 19.7 for two (2) consecutive years and such permittee is not in violation of the Act.

b) To Operate a Liquid Oil Field Waste Transportation System
The amount of bond required to be filed with the Department before a permit is issued authorizing a person to operate a liquid oil field waste system shall be $10,000. When requested by permittee, bond shall be released when the permittee ceases operation and this system and such permittee's system is not in violation of the Act.

c) To Drill a Test Hole
The amount of bond required to be filed with the Department before a permit is issued to drill a geological structure, coal or other mineral test hole, or a monitoring well in connection with any activity regulated by the Department shall be $2500 for each hole or a blanket bond of $25,000 for all holes. The bond requirements of this Subpart shall not apply to a hole or well drilled on acreage permitted and bonded under the Surface-Mined Land Conservation and Reclamation Act ~~[Ill. Rev. Stat. 1991, ch. 96 1/2, par. 4501 et seq.]~~ [225 ILCS 715] or the Surface Coal Mining Land Conservation and Reclamation Act ~~[Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7901.01 et seq.]~~ [225 ILCS 720]. When requested by permittee, bonds shall be released when the hole or holes are plugged and restored in accordance with Section 240.1260 and the permittee is not in violation of the Act.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1520 Bond Requirements

a) Form
Bonds shall be in such form and content as the Department prescribes, payable to the "Illinois Department of Mines and Minerals."

b) Conditions Generally
1) Each bond shall conform with the requirements of the Act and this Part and with the declared purpose for which the bond is required.
2) Bonds shall remain in effect until the obligations for which it is given have been satisfied and the bond has been released by the Department, pursuant to the Act and this Subpart.

c) Surety Bond Requirements
1) Bonds shall be signed by the permittee as principal, and by a good and sufficient corporate surety, authorized to transact business as a surety in Illinois.
2) Each surety bond shall provide that the bond shall not be cancelled by the surety except after not less than ninety (90) days notice to the Department. Such notice shall be served upon the Department in writing by registered or certified mail to the ~~following address:~~ Department's Springfield offices.
   ~~Illinois Department of Mines and Minerals~~
   ~~Oil and Gas Division~~
   ~~300 West Jefferson, Suite 300~~
   ~~P.O. Box 10140~~
   ~~Springfield, Illinois 62791 9149~~
3) Prior to the expiration of the ninety (90) days notice of cancellation, the permittee shall deliver to the Department a replacement bond. If such bond is not delivered, all activities covered by the permit and bond shall cease at the expiration of the ninety (90) day period.
4) If the license to transact business in Illinois of any surety upon a bond filed with the Department shall be suspended or revoked, the permittee, within thirty (30) days after receiving notice thereof from the Department, shall make substitution by providing a surety bond or other security as required by this Subpart. Upon the failure of the permittee to make the substitution of bond, all activities covered by the permit and bond shall cease until substitution has been made.

d) Other Securities Requirements
1) Letters of credit shall be subject to the following conditions:
   A) The letter may only be issued by a bank organized or authorized to do business in the United States ("issuing bank"). If the issuing bank does not have an office for collection in Illinois, there shall be a confirming bank designated that is authorized to accept, negotiate and pay the letter upon presentment in Illinois.
   B) Letters of credit shall be irrevocable during their terms. A letter of credit shall be forfeited and shall be collected by the Department if not replaced by other suitable bond or letter of credit at least thirty (30) days before its expiration date.
   C) The letter of credit shall be payable to the Department upon demand, in part or in full, upon receipt from the Department of a notice of forfeiture issued in accordance with Section

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240.1530.

D) The Department shall not accept a letter of credit in excess of ten percent (10%) of the issuing bank's total capital and surplus accounts, as certified by the President of the bank providing the letter of credit and as evidenced by the most recent quarterly Call Report provided to the Federal Deposit Insurance Corporation.

E) The letter of credit shall provide on its face that the Department, its lawful assigns, or the attorneys for the Department or its assigns, may sue, waive notice and process, appear on behalf of, and confess judgment against the issuing bank (and any confirming bank) in the event that the letter of credit is dishonored. The letter of credit shall be deemed to be made in Sangamon County, Illinois, for the purpose of enforcement and any actions thereon shall be enforceable in the ~~Courts~~ Courts of Illinois, and shall be construed under Illinois law.

2) Certificates of deposit shall be subject to the following conditions:

A) The Department shall require that certificates of deposit be made payable to or assigned to the Department both in writing and upon the records of the bank issuing the certificates. If assigned, the ~~Department~~ Department shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.

B) The Department shall not accept an individual certificate of deposit in an amount in excess of the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

C) Any interest accruing on a certificate of deposit shall be for the benefit of the permittee except that accrued interest shall first be applied to any prepayment penalty when a certificate of deposit is forfeited by the Department.

D) The certificate of deposit, if a negotiable instrument, shall be placed in the Department's possession. If the certificate of deposit is not a negotiable instrument, a withdrawal receipt, endorsed by the permittee, shall be placed in the Department's possession.

3) Cash accounts shall be subject to the following conditions:

A) The Department may authorize the permittee to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to the Department.

B) Any interest paid on a cash account shall be returned to the permittee.

C) The Department shall not accept an individual cash account

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in an amount in excess of the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1530 Forfeiture of Bonds

a) A permittee's failure to comply with the Department's order to plug, replug or repair a well, or to restore a well site, within thirty (30) days of the issuance of such order constitutes grounds for bond forfeiture, pursuant to Sections 6 and 19.1 of the Act ~~(Ill.--Rev. Stat.--1989,--ch.--96-1/2,--para.--5409--and-5426)~~ [225 ILCS 725/6 and 725/19.1].

b) The Department shall send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit the bond pursuant to subsection (a) above.

c) The Department may allow a surety to undertake necessary plugging, replugging, repair or site restoration work if the surety can demonstrate an ability to complete such work in accordance with the requirements of the Act. No surety liability shall be released until the successful completion of all plugging, replugging, repair or site restoration ordered by the Department.

d) In the event forfeiture of the bond is warranted by subsection (a), the Department shall afford the permittee the right to a hearing, if such hearing is requested in writing by the permittee within fifteen (15) days after the bond forfeiture notification is mailed in accordance with subsection (b). If the permittee does not request a hearing within the fifteen (15) day period, the Department shall issue a final administrative decision ordering forfeiture. If a hearing is requested by the permittee, the hearing shall be ~~held~~ scheduled within fifteen (15) days of the receipt of the request for hearing, and shall be conducted by an impartial hearing officer not employed by the Department.

e) At the bond forfeiture hearing, the Department shall present evidence in support of its determination under subsection (a). The permittee shall present evidence contesting the Department's determination under subsection (a). The hearing officer may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence.

f) Within thirty (30) days after the close of the record for the bond forfeiture hearing, the hearing officer shall issue recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case.

g) The Director shall review the administrative record in a contested

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case, in conjunction with the hearing officer's recommended findings of fact, recommended conclusions of law and recommendations as to the disposition of the case. The Director shall then issue the Department's final administrative decision affirming, vacating or modifying the hearing officer's decision.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1640 Repayment of Funds

a) The permittee must reimburse the Plugging and Restoration Fund for all funds obligated from the Plugging and Restoration Fund for repair, plugging or restoration work on the permittee's wells or sites, together with all interest accrued, as provided under Section 19.9 of the Act.
b) Prior to repayment of all funds, the permittee shall not operate any other existing wells in the permittee's name.
c) After repayment of all funds, the permittee shall post a bond in accordance with Section 240.1500(a)(1)(E) and (a)(2) prior to permitting or operating any wells.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

SUBPART Q: ANNUAL WELL FEES

Section 240.1700 Fee Liability

a) The Department shall assess fees during each calendar year for all permits of record as of July 1, including wells reported to be transferred pursuant to Subpart N but not yet approved for transfer by the Department. The permittee for each well is responsible for paying these annual fees in the amounts specified in Section 240.1705 below.
b) The permittee remains liable for the payment of such fees until:
   1) the well or wells under permit to the permittee are plugged and restored; or
   2) the well or wells have been transferred to a new permittee pursuant to Subpart N.
c) Liability for annual well fees ceases on the date when the well has been plugged and restored or on the effective date stated on the Department's Notification of Transfer Form.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1710 Annual Permittee Reporting

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a) Permittees are required to submit, on a form prescribed by the Department, an annual verification of address and status.
b) The form shall contain reports for information on Permittees:
   1) current address;
   2) verification of well ownership;
   3) type of business entity and supporting documentation;
   4) FEIN; and
   5) names and addresses of principals, officers or owners.
c) Forms shall accompany the Annual Well Fee payment and shall be submitted by September 1 of each year.
d) If a permittee did not submit an annual verification of address and status form during the most recent annual fee payment period, a reporting form is required at the time of all well permit and transfer requests.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1740 Delinquent Permittees

~~A permittee is responsible for paying annual well fees for all wells permitted with the Department on duly 1 of each year, including wells requested to be transferred pursuant to Subpart N but not yet approved for transfer by the Department.~~ Fees not received by November 1, of each year, shall be deemed delinquent and the wells covered by the fees shall be determined to be abandoned in accordance with Section 240.1600 and subject to plugging in accordance with Section 240.1610.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

Section 240.1820 Permit Requests in a Underground Gas Storage Field

a) When the proposed location to drill, deepen, ~~or~~ convert or amend an oil or gas production or Class II well, as defined in Subparts B and C, or a Test Hole, as defined in Subpart L, occurs within the limits of an Underground Gas Storage Field, or within any protective boundary shown on the Gas Storage Operators map submitted to the Department, a permit shall not be issued until the applicant complies with subsections (a)(1) or (2) below:
   1) Enters into an agreement with Gas Storage Operator, outlining safety precautions and well drilling, completion, operating and plugging specifications. The agreement shall be signed by the applicant and the Gas Storage Operator. Agreement shall be submitted with the permit application.
   2) Submits a copy of an agreement previously reached with the Gas Storage Operator which outlines safety precautions and well drilling, completion, operating and plugging specifications. The

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agreement must be in full effect and cover the proposed drilling location.

3) If an agreement cannot be reached after the applicant has exercised due dilligence in negotiations, the applicant shall notify the Gas Storage Operator of the proposed location and depth of the well by certified mail, return receipt requested. The certified mail receipt shall be attached to the permit application. If a written objection is not received by the Department within fifteen (15) days after the date of receipt the permit shall be issued. If a written objection to the application is filed with the Department within fifteen (15) days after receipt of the notice of application, the Department shall consider the objection in determining whether the permit should be issued. If the objection raises a question regarding public safety, resource ownership or sufficiency of application, the permit objection shall be set for a public hearing. A hearing shall be set only after all other requirements for issuance of the permit have been fulfilled.

b) Public Hearing

1) Any public hearing held pursuant to this Section shall be a formal hearing conducted by the Department solely for the purpose of resolving the factual or legal question raised by the objection.

2) Notice of the hearing shall be sent by the Department to the applicant and to the objector by mailing such notice by United States mail, postage prepaid, addressed to their last known home or business address.

3) A certified court reporter shall record the hearing at the Department's expense.

4) A Hearing Officer designated by the Department shall conduct the hearing. The Hearing Officer shall allow all parties at the hearing to present evidence in any form, included by oral testimony or documentary evidence, unless the Hearing Officer determines such evidence is irrelevant, immaterial, unduly repetitious, or of such such a nature that reasonably prudent members of the public or people knowledgeable in the oil and gas field would not rely upon it in the conduct of their affairs.

5) The Hearing Officer shall have the power to continue the hearing or to leave the record open for a certain period of time in order to obtain or receive further relevant evidence.

6) Within thirty (30) days after the closing of the record or the receipt of the transcript of the hearing, whichever comes later, the Department shall render a decision on the objection.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

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1) Heading of the Part: Administration of the Illinois Public Community College Act

2) Code Citation: 23 Ill. Adm. Code 1501

3)

Section Numbers:	Adopted Action:
1501.501	Amendment
1501.507	Amendment

4) Statutory Authority: Ill. Rev. Stat. 1991, ch. 122, pars. 102-1 et seq., pars. 103-1 et seq., and par. 106-5.3 [110 ILCS 805/2-1 et seq., 805/3-1, and 6-5.3]

5) Effective Date of Amendments: February 14, 1995

6) Does this rulemaking contain an automatic repeal date? No

7) Do the Amendments contain incorporations by reference? No

8) Date Filed in Agency's Principal Office: June 17, 1994

9) Notice of Proposal Published in Illinois Register: August 19, 1994; 18 Ill. Reg. 12575

10) Has JCAR issued a Statement of Objections to the Amendments? No

11) Differences between proposal and final version: Several minor typographical changes were made.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? No agreements were necessary.

13) Will the Amendment replace an emergency rule currently in effect? No

14) Are there any Amendments pending on this Part? No

15) Summary and Purpose of Amendment: The amendments will allow members of the armed services stationed in a community college district to be classified as residents of the district. Also, the amendments simplify the verification of enrollments in variable entry/variable exit courses or short term courses.

16) Information and questions regarding this adopted amendment shall be directed to:

Zachariah Mathew
Special Assistant for Fiscal Affairs

ILLINOIS COMMUNITY COLLEGE BOARD

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Illinois Community College Board
509 South Sixth Street, Room 400
Springfield, Illinois 62701-1874
(217) 785-0015 (voice)
(217) 782-5645 (TDD)

The full text of the Adopted Amendments begins on the next page:

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TITLE 23: EDUCATION AND CULTURAL RESOURCES
SUBTITLE A: EDUCATION
CHAPTER VII: ILLINOIS COMMUNITY COLLEGE BOARD

PART 1501
ADMINISTRATION OF THE ILLINOIS PUBLIC COMMUNITY COLLEGE ACT

SUBPART A: ILLINOIS COMMUNITY COLLEGE BOARD ADMINISTRATION

Section
1501.101 Definition of Terms
1501.102 Advisory Groups
1501.103 Rule Adoption (Recodified)
1501.104 Manuals
1501.105 Advisory Opinions
1501.106 Executive Director
1501.107 Information Request (Recodified)
1501.108 Organization of ICCB (Recodified)
1501.109 Appearance at ICCB Meetings
1501.110 Appeal Procedure
1501.111 Reporting Requirements (Repealed)
1501.112 Certification of Organization (Repealed)
1501.113 Administration of Detachments and Subsequent Annexations
1501.114 Recognition

SUBPART B: LOCAL DISTRICT ADMINISTRATION

Section
1501.201 Reporting Requirements
1501.202 Certification of Organization
1501.203 Delineation of Responsibilities
1501.204 Maintenance of Documents or Information
1501.205 Recognition Standards (Repealed)

SUBPART C: PROGRAMS

Section
1501.301 Definition of Terms
1501.302 Units of Instruction, Research, and Public Service
1501.303 Program Requirements
1501.304 Statewide and Regional Planning
1501.305 College, Branch, Campus, and Extension Centers
1501.306 State or Federal Institutions (Repealed)
1501.307 Cooperative Agreements and Contracts
1501.308 Reporting Requirements
1501.309 Course Classification and Applicability

SUBPART D: STUDENTS

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Section
1501.401 Definition of Terms
1501.402 Admission of Students
1501.403 Student Services
1501.404 Academic Records
1501.405 Student Evaluation
1501.406 Reporting Requirements

SUBPART E: FINANCE

Section
1501.501 Definition of Terms
1501.502 Financial Planning
1501.503 Audits
1501.504 Budgets
1501.505 Nonresident Student Tuition Calculations
1501.506 Published Financial Statements
1501.507 Credit Hour Grants
1501.508 Special Populations Grants
1501.509 Workforce Preparation Grants
1501.510 Reporting Requirements
1501.511 Chart of Accounts
1501.514 Business Assistance Grants (Repealed)
1501.515 Advanced Technology Equipment Grants
1501.516 Capital Renewal Grants
1501.517 Retirees Health Insurance Grants
1501.518 Uncollectible Debts

SUBPART F: CAPITAL PROJECTS

Section
1501.601 Definition of Terms
1501.602 Approval of Capital Projects
1501.603 State Funded Capital Projects
1501.604 Locally Funded Capital Projects
1501.605 Project Changes
1501.606 Progress Reports (Repealed)
1501.607 Reporting Requirements
1501.608 Approval of Projects in Section 3-20.3.01 of the Act
1501.609 Completion of Projects Under Section 3-20.3.01 of the Act
1501.610 Demolition of Facilities

SUBPART G: STATE COMMUNITY COLLEGE

Section
1501.701 Definition of Terms
1501.702 Applicability
1501.703 Recognition

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1501.704 Programs
1501.705 Finance
1501.706 Personnel
1501.707 Facilities

SUBPART H: PERSONNEL

Section
1501.801 Definition of Terms
1501.802 Sabbatical Leaves

AUTHORITY: Implementing and authorized by Articles II and III and Section 6-5.3 of the Public Community College Act (Ill. Rev. Stat. 1991, ch. 122, pars. 102-1 et seq., 103-1 et seq., and 106-5.3) [110 ILCS 805/Arts. II and III and 6-5.3].

SOURCE: Adopted at 6 Ill. Reg. 14262, effective November 3, 1982; codified at 7 Ill. Reg. 2332; amended at 7 Ill. Reg. 16118, effective November 22, 1983; Sections 1501.103, 1501.107 and 1501.108 recodified to 2 Ill. Adm. Code 5175 at 8 Ill. Reg. 6032; amended at 8 Ill. Reg. 14262, effective July 25, 1984; amended at 8 Ill. Reg. 19383, effective September 28, 1984; emergency amendment at 8 Ill. Reg. 22603, effective November 7, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 24299, effective December 5, 1984, for a maximum of 150 days; amended at 9 Ill. Reg. 3691, effective March 13, 1985; amended at 9 Ill. Reg. 9470, effective June 11, 1985; amended at 9 Ill. Reg. 16813, effective October 21, 1985; amended at 10 Ill. Reg. 3612, effective January 31, 1986; amended at 10 Ill. Reg. 14658, effective August 22, 1986; amended at 11 Ill. Reg. 7606, effective April 8, 1987; amended at 11 Ill. Reg. 18150, effective October 27, 1987; amended at 12 Ill. Reg. 6660, effective March 25, 1988; amended at 12 Ill. Reg. 15973, effective September 23, 1988; amended at 12 Ill. Reg. 16699, effective September 23, 1988; amended at 12 Ill. Reg. 19691, effective November 15, 1988; amended at 13 Ill. Reg. 1182, effective January 13, 1989; amended at 13 Ill. Reg. 14904, effective September 12, 1989; emergency amendment at 14 Ill. Reg. 299, effective November 9, 1989, for a maximum of 150 days; emergency amendment expired on April 9, 1990; amended at 14 Ill. Reg. 4126, effective March 1, 1990; amended at 14 Ill. Reg. 10762, effective June 25, 1990; amended at 14 Ill. Reg. 11771, effective July 9, 1990; amended at 14 Ill. Reg. 13997, effective August 20, 1990; amended at 15 Ill. Reg. 10929, effective July 11, 1991; amended at 16 Ill. Reg. 12445, effective July 24, 1992; amended at 16 Ill. Reg. 17621, effective November 6, 1992; amended at 17 Ill. Reg. 1853, effective February 2, 1993; expedited correction at 18 Ill. Reg. 3027, effective August 20, 1990; amended at 18 Ill. Reg. 4635, effective March 9, 1994; amended at 18 Ill. Reg. 8906, effective June 14, 1994; amended at 19 Ill. Reg. 2299, effective FEB 14 1995.

SUBPART E: FINANCE

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Section 1501.501 Definition of Terms

Advanced Technology Equipment Grant. The advanced technology equipment grant provides state funds to Illinois public community colleges for the procurement of equipment necessary to upgrade curricula impacted by technological changes. (See Section 2-16 of the Act.)~~.~~

Annual Financial Statement. The "annual financial statement," which is required to be published by a district, consists of two parts:

an annual financial report, which includes a statement of revenues and expenditures along with other basic financial data; and

an annual program report, which provides a narrative description of programs offered, goals of the district, and student and staff data.

Attendance at Mid-Term. A student is "in attendance at mid-term" in a course if the student is currently enrolled in and actively pursuing completion of the course.

Auditor. An auditor is a person who enrolls in a class without intent to obtain academic credit and whose status as an auditor is declared by the student, approved by college officials, and identified on college records prior to the end-of-registration date of the college for that particular term.

Business Assistance Centers and Workforce Preparation Offices. Business assistance centers and workforce preparation offices are entities at community colleges that conduct, coordinate, and assist with workforce preparation activities.

Capital Renewal Grants. Capital renewal grants are state grants allocated proportionally to each community college district based on the latest fall on-campus nonresidential gross square feet of facilities as certified by the ICCB. Such grants are to be utilized for miscellaneous capital improvements such as rehabilitation, remodeling, improvement, and repair; architect/engineer services; supplies, fixed equipment, and materials; and all other expenses required to complete the work.

Residency - Applicability-Verification of Status. As part of verification that its credit hours are eligible to receive ICCB grants, each community college district shall adopt a process for verifying the residency status of its students and shall file a description of this process with the ICCB by July 1, 1990. The process shall include the methods for verifying residency as defined in the general provisions, special state provisions, and district

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provisions of this subsection. Each district shall file descriptions of any revisions to its process with the ICCB prior to their implementation.

Residency - General Provisions. The following provisions apply both to state and district residency definitions:

To be classified as a resident of the State of Illinois or of the community college district, each student shall have occupied a dwelling within the state or district for at least 30 days immediately prior to the date established by the district for classes to begin.

The district shall maintain documentation verifying state or district residency of students.

Students occupying a dwelling in the state or district who fail to meet the 30-day residency requirement may not become residents simply by attending classes at a community college for 30 days or more.

Students who move from outside the state or district and who obtain residence in the state or district for reasons other than attending the community college shall be exempt from the 30-day requirement if they demonstrate through documentation a verifiable interest in establishing permanent residency.

Residency - District Provisions. Students shall not be classified as residents of the district where attending even though they may have met the general 30-day residency provision if they are:

federal job corps workers stationed in the district;

~~members of the armed services stationed in the district;~~

inmates of state or federal correctional/rehabilitation institutions located in the district;

full-time students attending a postsecondary educational institution in the district who have not demonstrated through documentation a verifiable interest in establishing permanent residency; and

students attending under the provisions of a chargeback or contractual agreement with another community college.

Residency - Special State Provisions. Students shall be classified as residents of the state without meeting the general 30-day residency provision if they are:

federal job corps workers stationed in Illinois;

members of the armed services stationed in Illinois;

inmates of state correctional/rehabilitation institutions located in Illinois; or

employed full time in Illinois.

Special Populations Grant. A "special populations grant" provides funding for:

Special or extra services to assist special populations students to initiate, continue, or resume their education, including

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tutoring, educational and career counseling, referrals to external agencies, and testing/evaluation to determine courses or services needed by a special populations student.
Courses (not funded through credit hour grants) to provide the academic skills necessary to remedy or correct educational deficiencies to allow the attainment of educational goals, including remedial, adult basic education, adult secondary education, and English as a Second Language courses.

Special Populations Student. A "special populations student" is a student with a social, physical, developmental, or academic disability that makes it difficult for such a student to adapt to a college environment designed for the nonspecial populations student. This may include students from minority racial/ethnic groups. Colleges shall designate which of their students are special populations as determined by teacher and counselor evaluations and various standardized tests selected by the colleges.

Workforce Preparation Activities. Workforce preparation activities create or retain jobs and increase employment opportunities.

Workforce Preparation Grants. Workforce preparation grants provide funds for conducting workforce preparation activities.

(Source: Amended at 19 Ill. Reg. 2299, effective FEB 14 1995)

Section 1501.507 Credit Hour Grants

a) Claims. Claims for credit hours shall be submitted within thirty (30) days after the end of each term on forms provided by the ICCB.
b) Course Requirements. Courses which produce credit hours eligible for ICCB grants shall satisfy the following requirements:
   1) Courses shall be offered for the number of credit hours for which they are approved by the ICCB.
   2) Courses which have variable credit hours shall be claimed in specified increments only up to the maximum credit value approved for the course.
   3) Course data shall be posted to the permanent academic record of each student claimed.
   4) Courses shall be a part of units of instruction which have been approved by the ICCB, or the courses must be authorized extensions of existing units of instruction.
   5) Courses shall have specific written objectives.
   6) A course outline shall be available for review by any student or citizen.
   7) Courses shall have a method of evaluating student performance which follows the adopted college grading system.

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   8) Courses shall follow the adopted college policies on student tuition.
   9) The following categories of physical education courses shall be the only ones to produce eligible credit hours:
      A) Elective physical education courses;
      B) Required courses for majors and minors in physical education, recreational leadership, and related programs;
      C) Physical education courses in teacher education programs as required by the State Teachers Certification Board.
   10) Courses shall produce a maximum rate of one (1) semester credit hour or equivalent per week. Requests for exceptions to this part may be submitted to the ICCB. The criteria utilized by the ICCB for exceptions shall include:
      A) documentation of need for an intensified or accelerated schedule;
      B) student population identified with testing and/or screening to indicate special needs and/or competencies;
      C) how courses are instructed, including schedule of classes, study time allotted for students, method of instruction and how students are evaluated;
      D) time period of instructional activity and projected termination date;
      E) procedures to evaluate the accelerated instructional activity.
c) Student Requirements. The following requirements shall apply to students who generate credit hours eligible for ICCB grants:
   1) Students shall be certified by their instructors as being in attendance at mid-term by including a certification statement on the mid-term class roster, signed and dated by the instructor.
   2) Students who complete a course with a passing grade by the end of the term and who were not certified as being in attendance at mid-term by the instructor shall be considered as having been in attendance at mid-term.
   3) Students enrolled in variable entry/variable exit classes or short-term classes of less than eight weeks may be certified by their instructors as having been in attendance at midterm by including a certification statement on the final class roster, signed and dated by the instructor.
   ~~3~~4) Students shall be residents of the State of Illinois.
   ~~4~~5) Auditors or visitors in a course shall not produce eligible credit hours.
   ~~5~~6) Students who repeat enrollment in a course shall produce credit hours eligible for ICCB grants when one of the following conditions is met:
      A) If the student completed the course the first time of enrollment with less than a grade of C (or equivalent) and if the student was claimed for credit hour grant funding, the student may enroll and be claimed in the course one

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NOTICE OF ADOPTED AMENDMENTS

additional time, or

B) If the student enrolled in the course previously and withdrew before completing the course, and if the student was claimed for credit hour grant funding, the student may enroll and be claimed in the course one additional time, or

C) If a student completed the course previously and was claimed for credit hour grant funding, the student may be claimed for retaking the course if the student uses his/her option to retake the course tuition free under the college's educational guarantee program, or

D) If the last time the student completed the course was at least four years previously, the student may be claimed for credit hour grant funding if the student repeats the course to upgrade his/her skills in that area, or

E) If a course has been approved by the ICCB to be repeated, the student may repeat the course and be claimed as often as approved by the ICCB.

d) Exceptions. The following credits will not be eligible for ICCB credit hour grants:

1) Credit by examination;
2) Military service credit for physical education;
3) Transfer of credit earned at other institutions or in the armed forces;
4) Proficiency examinations;
5) Advanced placement credits;
6) Other methods of program acceleration which do not include instruction.

(Source: Amended at 19 Ill. Reg. 2299, effective FEB 14 1995)

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: The Structural Engineering Act of 1987

2) Code Citation: 68 Ill. Adm. Code 1480

3) Section Numbers: 1480.190 — Adopted Action: Amendment

4) Statutory Authority: Authorized by Sections 6 and 14 of the Structural Engineering Licensing Act of 1989 [225 ILCS 340/6 and 14].

5) Effective Date of Rulemaking: February 14, 1995

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? No.

8) Date Filed in Agency's Principal Office: February 10, 1995

9) Notice of Proposal Published in Illinois Register: November 28, 1994, at 18 Ill. Reg. 16901.

10) Has JCAR issued a Statement of Objections to these rules? No

11) Difference(s) between proposal and final version: The only changes involved updating the Illinois Register volume number to 19.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? No agreement letter with JCAR was necessary for this rulemaking.

13) Will this rulemaking replace an emergency rule currently in effect? No

14) Are there any amendments pending on this Part? Yes

Section Numbers	Adopted Action	Illinois Register Citation
1480.215	New	19 Ill. Reg. 1195 (2/10/95)

15) Summary and Purpose of Rulemaking: This rulemaking amends the renewals Section to allow licensed structural engineers to satisfy seismic design requirements by passing the National Council of Examiners for Engineering and Surveying (NCEES) Structural II PM Examination administered by Illinois effective with the April 1991 administration. Due to an oversight in a previous rulemaking, current rules have an October 1991 effective date for acceptance of that exam even though seismic design has been a part of the Illinois examination since, and including, the April 1991 administration.

16) Information and questions regarding this adopted amendment shall be

DEPARTMENT OF PROFESSIONAL REGULATION

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directed to:

Jean Courtney
Department of Professional Regulation
320 West Washington - 3rd Floor
Springfield, IL 62786
(217) 785-0800 or Fax: (217) 782-7645

The full text of the Adopted Amendment begins on the next page:

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF ADOPTED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1480
THE STRUCTURAL ENGINEERING LICENSING ACT OF 1989

Section
1480.10 Statutory Authority (Repealed)
1480.20 Licensure (Repealed)
1480.30 Approved Education Qualifications (Repealed)
1480.40 Approved Experience Qualifications (Repealed)
1480.45 Renewals (Renumbered)
1480.50 Restoration of Expired Certificate (Repealed)
1480.60 Granting Variances (Renumbered)
1480.110 Approved Structural Engineering Curriculum
1480.120 Definition of Degree in Related Science
1480.130 Approved Experience
1480.140 Application for Licensure by Examination
1480.150 Examination
1480.160 Restoration
1480.170 Endorsement
1480.180 Inactive Status
1480.190 Renewals
1480.200 Corporations and Partnerships
1480.210 Standards of Professional Conduct
1480.220 Granting Variances (Renumbered)

AUTHORITY: Implementing the Structural Engineering Licensing Act of 1989 [225 ILCS 340] and authorized by Section 60(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/60(7)].

SOURCE: Adopted at 4 Ill. Reg. 22, p. 242, effective May 15, 1980; amended at 4 Ill. Reg. 44, p. 475, effective October 20, 1980; codified at 5 Ill. Reg. 11068; amended at 5 Ill. Reg. 14171, effective December 3, 1981; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; transferred from Chapter I, 68 Ill. Adm. Code 480 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1480 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2947; emergency amendment at 13 Ill. Reg. 5781, effective April 5, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 13891, effective August 22, 1989; amended at 15 Ill. Reg. 7081, effective April 29, 1991; amended at 17 Ill. Reg. 11162, effective July 1, 1993; amended at 18 Ill. Reg. 14751, effective September 19, 1994; amended at 19 Ill. Reg. 2309, effective FEB 14 1995.

Section 1480.190 Renewals

DEPARTMENT OF PROFESSIONAL REGULATION

NOTICE OF ADOPTED AMENDMENTS

a) Every license issued to an individual under the Act shall expire on November 30 of each even numbered year. The holder of a license may renew such license during the month preceding the expiration date thereof by paying the required fee set forth in Section 17 of the Act. Starting with the 1996 renewal, all licensees must submit satisfactory evidence of knowledge in seismic design in order to renew their licenses.

1) The seismic design requirement can be satisfied by any one of the following:

A) Passage of the NCEES Structural II PM Examination administered by Illinois effective with the ~~October~~ April 1991 administration or passage of the Western States Structural Examination or the NCEES Structural II PM Examination administered by all other jurisdictions beginning with the spring 1993 administrations. Evidence of passage of one of the above-identified examinations shall be submitted by the licensee and may be a copy of the licensee's pass notice;

B) Satisfactory completion of a Board approved course of instruction dealing with seismic design that is part of an approved engineering curriculum. The licensee shall submit the course title and catalog course description to the Board for approval prior to taking the course. Evidence of completion shall be a college transcript. Audited courses are not acceptable;

C) Satisfactory completion of a Board approved professional seminar dealing with seismic design and involving a minimum of 16 contact hours (1.6 continuing education units or 1 semester hour of university credit) of lectures. Evidence of completion shall be by means of a valid certificate of completion signed by the providers of the seminar or an official transcript from the university. Audited ~~course~~ courses are not acceptable; or

D) Evidence that the licensee has taught a Board approved professional seminar or course dealing with seismic design that is part of an approved engineering curriculum or has conducted significant research into the problems of seismic resistance of structures and published the results of the significant research.

2) The Board shall utilize, but not be limited to, the following standards when approving a course or seminar in subsection (a)(1), (B), (C) and (D) above:

A) Effects of earthquakes on buildings or bridges;

B) Structural standards and specifications for buildings or bridges;

C) Concepts in structural dynamics;

D) Seismic loading including seismicity;

E) Seismic response analysis; and

DEPARTMENT OF PROFESSIONAL REGULATION

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F) Seismic design concepts including concrete, steel, other structural materials and foundations.

b) It is the responsibility of each licensee to notify the Department of any change of address. Failure to receive a renewal form from the Department shall not constitute an excuse for failure to pay the renewal fee or to renew one's license.

c) Every license issued to a corporation or partnership under the Act shall expire on April 30 of each odd numbered year. The holder of such license may renew that license for a 2-year period during the month preceeding the expiration date thereof by paying the required fee and submitting a current listing of structural engineers licensed in Illinois that are employed by the firm.

d) Practicing or offering to practice on a license ~~which~~ that has expired shall be considered unlicensed activity and shall be grounds for discipline pursuant to Section 20 of the Act.

(Source: Amended at 19 Ill. Reg. 2309, effective FEB 14 1995)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF RECOMMENDATION
TO PROPOSED RULEMAKING

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Heading of the Part: Licensing Standards for Day Care Homes

Code Citation: 89 Ill. Adm. Code 406

Section Numbers: 406.2 406.8 406.9 406.13 406.22

Date Originally Published in the Illinois Register: 2/25/94
18 Ill Reg 2683

At its meeting on February 7, 1995, the Joint Committee on Administrative Rules considered the above cited rulemaking and recommends that the State Fire Marshal initiate a rulemaking to place into its rules its policy and procedures for granting equivalencies for day care homes and group day care homes that do not meet the basement exiting requirements specified in DCFS' rules (89 Ill. Adm. Code 406). The OSFM rules should specify what other methods will be deemed equivalent (i.e., hard wired smoke detectors and sprinkler systems). The Committee further recommends that DCFS provide the OSFM with any assistance it might need to propose these rules.

JCAR also recommends that DCFS re-examine the issue of necessary training for licensees in first aid and CPR for possible inclusion in future rulemaking.

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.

(Sections 406.2 and 406.22 were added at Second Notice.)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF RECOMMENDATION
TO PROPOSED RULEMAKING

DEPARTMENT OF CHILDREN AND FAMILY SERVCES

Heading of the Part: Licensing Standards for Group Day Care Homes

Code Citation: 89 Ill Adm Code 408

Section Numbers: 408.5 408.30 408.40 408.45 408.65 408.105

Date Originally Published in the Illinois Register: 2/25/94
18 Ill Reg 2700

At its meeting on February 7, 1995, the Joint Committee on Administrative Rules considered the above cited rulemaking and recommends that the Office of the State Fire Marshal initiate a rulemaking to place into its rules its policy and procedures for granting of equivalencies for day care homes and group day care homes that do not meet the basement exiting requirements specified in DCFS' rules (89 Ill Adm Code 408). The OSFM rules should specify what other methods will be deemed equivalent (i.e., hard wired smoke detectors and sprinkler systems). The Committee further recommends that DCFS provide the OSFM with any assistance it might need to propose these rules.

JCAR also recommends that DCFS re-examine the issue of necessary training for licensees in first aid and CPR for possible inclusion in future rulemaking.

The agency should respond to this Recommendation in writing within 90 days after receipt of this Statement. Failure to respond will constitute refusal to accede to the Committee's Recommendation. The agency's response will be placed on the JCAR agenda for further consideration.

(Section 408.5 and 408.105 were added at Second Notice.)

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION
TO PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

Heading of the Part: Nonpublic Special Education Facilities

Code Citation: 23 Ill Adm Code 401

Section Numbers: 401.10 401.20 401.30 401.110
401.120 401.130 401.140 401.150
401.210 401.220 401.230 401.240
401.250 401.260 401.270 401.280

Date Originally Published in the Illinois Register: 7/1/94
18 Ill Reg 9756

At its meeting on February 7, 1995, the Joint Committee on Administrative Rules objected to the above cited rulemaking because SBE has exceeded its statutory authority under Section 14-7.02 of the School Code by proposing to regulate nonpublic special education facilities and private schools in the same manner as public schools. Furthermore, SBE fails to present adequate justification and rationale for this rulemaking in accordance with Section 5-100 of the Illinois Administrative Procedure Act in light of the shortage of certified special education teachers/administrators this rulemaking would likely create. Also, SBE has failed to adequately consider the economic and budgetary effects of this rulemaking on private facilities in accordance with Section 5-30 of the Illinois Administrative Procedure Act.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed to be a refusal to respond under the Administrative Procedure Act and shall constitute withdrawal of this proposed rulemaking.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

FILING PROHIBITION

STATE BOARD OF EDUCATION

Heading of Part: Nonpublic Special Education Facilities

Code Citation: 23 Ill Adm Code 401

Section Numbers: 401.10 401.20 401.30 401.110
401.120 401.130 401.140 401.150
401.210 401.220 401.230 401.240
401.250 401.260 401.270 401.280

Date Originally Published in the Illinois Register: 7/1/94
18 Ill Reg 9756

At its meeting on February 7, 1995, the Joint Committee on Administrative Rules voted to prohibit filing of the above proposed rulemaking with the Secretary of State. The Committee found that the adoption of these rules would constitute a serious threat to the public interest and welfare. The reason for the prohibition is as follows:

> SBE has exceeded its statutory authority under Section 14-7.02 of the School Code by proposing to regulate nonpublic special education facilities and private schools in the same manner as public schools with the likely result being a shortage of certified special education teachers/administrators, thus threatening the health, safety and welfare of Illinois school children.

The proposed rules may not be filed with the Secretary of State or enforced by the Board for any reason for 180 days following receipt of this certification and statement by the Secretary of State.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION TO
EMERGENCY RULEMAKING

DEPARTMENT OF PUBLIC AID

Heading of the Part: Demonstration Programs

Code Citation: 89 Ill Adm Code 170

Date Originally Published in the Illinois Register: 1/20/95
19 Ill Reg 645

At its meeting on February 7, 1995, the Joint Committee on Administrative Rules objected to the emergency rules of the Department of Public Aid entitled Demonstration Programs (89 Ill Adm Code 170) because the rule extends the Department's preferred payment authority to families whose children are "beginning to show school attendance problems", contrary to the specific provisions of Section 4-8 of the Public Aid Code and of 89 Ill Adm Code 117.10 and contrary to the intent of IAPA, no emergency constituting a threat to the public interest, welfare or safety is apparent.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal.

DEPARTMENT OF MINES AND MINERALS

NOTICE OF CORRECTIONS TO PROPOSED AMENDMENTS

1) Heading of the Part: General Definitions

2) Code Citation: 62 Ill. Adm. Code 1701

3) Illinois Register Citation to Notice of Proposed Amendments:

19 Ill. Reg. 1498, Issue 7; February 17, 1995

4) Section being Corrected: 62 Ill. Adm. Code 1701.Appendix A

5) Corrections being made:

Two definitions were inadvertently omitted from this Section when it was originally proposed. The omitted definitions are discussed in the notice pages but not included within the text of the proposed amendments. The omitted definitions follow:

"Applicant Violator System or AVS" means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

"Wetland" means land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present.

The full text of the Proposed Amendments, as corrected, begins on the next page.

DEPARTMENT OF MINES AND MINERALS

NOTICE OF CORRECTIONS TO PROPOSED AMENDMENTS

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF MINES AND MINERALS

PART 1701
GENERAL DEFINITIONS

Section
1701.5 Definitions
APPENDIX A Definitions

AUTHORITY: Implementing and authorized by the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, pars. 7901.01 et seq.) [225 ILCS 720].

SOURCE: Adopted at 4 Ill. Reg. 37, p. 1, effective June 1, 1982; amended at 6 Ill. Reg. 1, effective June 1, 1982; codified at 8 Ill. Reg. 4932; amended at 11 Ill. Reg. 8075, effective July 1, 1987; amended at 14 Ill. Reg. 11800, effective January 1, 1991; amended at 15 Ill. Reg. 17141, effective January 1, 1992; amended at 17 Ill. Reg. 10947, effective July 1, 1993.

DEPARTMENT OF MINES AND MINERALS

NOTICE OF CORRECTIONS TO PROPOSED AMENDMENTS

Section 1701.APPENDIX A Definitions

As used in 62 Ill. Adm. Code 1700 - 1850, the following terms have the specified meanings, except when another meaning is given:

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid - forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water or weather processes, form acids that may create acid drainage.

"Act or Federal Act" means the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87. (30 U.S.C. 1201 et seq.).

"Adjacent area" means the area located outside the permit area, or shadow area, where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations.

"Administratively complete application" means an application for permit approval or approval for coal exploration where required, which the Department determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Affected area" means, with respect to surface mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground mining activities, affected area means: any water or surface land upon which those activities are conducted or located.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Applicant" means any person seeking a permit; permit revision; renewal; or transfer, assignment or sale from the Department to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant Violator System or AVS" means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

DEPARTMENT OF MINES AND MINERALS

NOTICE OF CORRECTIONS TO PROPOSED AMENDMENTS

"Application" means the documents and other information filed with the Department under these regulations for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, and spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the Department has determined that they comply with 62 Ill. Adm. Code 1816.49 and 1816.56, 1816.133 or 1817.49, 1817.56 and 1817.133. Section 1.03(a)(2) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7901.03(a)(2)) [225 ILCS 720/1.03(a)(2)].

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for specific use.

"Article" means an article of the State Act.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the cliff or highwall and transporting the coal along an auger bit to the surface.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will

prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by 62 Ill. Adm. Code 1816.42; and

minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Department, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 62 Ill. Adm. Code 1816 and 1817.

"Boxcut" means the first open cut resulting in the placing of overburden on unmined land adjacent to the initial pit.

DEPARTMENT OF MINES AND MINERALS

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"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-84 found at pp. 247-252 in Vol 5.05 of the Annual Book of ASTM Standards published by the American Society for Testing and Materials, 1916 Race St., Philadelphia PA 19103.

"Coal exploration" means the field gathering of:

surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of 62 Ill. Adm. Code 1700 - 1850.

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the area upon which such activities occur.

"Coal processing or coal preparation" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than

DEPARTMENT OF MINES AND MINERALS

NOTICE OF CORRECTIONS TO PROPOSED AMENDMENTS

a public building or an occupied dwelling, which is used primarily for functions of community groups; used for an educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required, which the Department determines contains all information which the State Act and 62 Ill. Adm. Code 1700 - 1850 require.

"Consolidated material" means materials of sufficient hardness or stability to resist weathering so as to inhibit erosion or sloughing.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

the proposed operation;
all existing operations;
any operation for which a permit application has been submitted to the Department.

"Darkened surface soil" means mineral horizons formed at or adjacent to the surface of the soil which are higher in organic matter content, and visibly darker in color than the immediately underlying horizons.

"Department" means the Illinois Department of Mines and Minerals, or its successor.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property, and other financial

DEPARTMENT OF MINES AND MINERALS

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relationships.

"Director" means the Director of the Department.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by 62 Ill. Adm. Code 1800 is released.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means

any person employed by the Department who performs any function or duty under the Act; and
advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decision-making functions for the Department under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

"Ephemeral stream" means a stream which meets both requirements:

It flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice; and
It has a channel bottom that is always above the local water table.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided, the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 62 Ill. Adm. Code 1816.102(d) and 1817.102(d) in nonsteep slope areas shall not be considered excess spoil.

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"Existing structure" means a structure used in connection with surface coal mining and reclamation operations for which construction began prior to June 1, 1982.

"Federal Director" means the Director of the Federal Office of Surface Mining Reclamation and Enforcement.

"Federal violation notice" means a violation notice issued by OSM or by another agency or instrumentality of the United States.

"Final cut" means the last pit created in a surface-mined area.

"Fragile lands" means geographic areas containing important natural, ecologic, scientific or esthetic resources that could be damaged or destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may cause flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 7.01 of the State Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7907.01) [225 ILCS 720/7.01] and 62 Ill. Adm. Code 1761.11, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

"Fugitive dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Gravity discharge" means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aboveground parts of vegetation and by the litter that is produced naturally on site.

"Ground water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

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"Head-of-hollow fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than twenty (20) degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than ten (10) degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"High capability land" means land not meeting the definition of prime farmland or land exempted in accordance with 62 Ill. Adm. Code 1785.17 where the Department determines the following three facts are present together:

The land is capable of being reclaimed for row-crop agricultural purposes;

The land is suitable for row-crop agricultural purposes based on United States Soil Conservation Service soil survey classifications of the affected land prior to mining (all soil types in capability Classes I, II, III and those soil types in capability Class IV with slopes of five (5) percent or less), as set forth in Land-Capability Classification, Agriculture Handbook No. 210, published by the U.S.. Department of Agriculture, Soil Conservation Service in 1973; and

The optimum future use of the land is for row-crop agricultural purposes.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Higher or better uses" means post-mining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

"Historically used for cropland" means:

Lands that have been used for cropland for any five (5) years or more out of the ten (10) years immediately preceding the acquisition, including purchase, lease, or option, of the lands for the purpose of conducting or allowing through resale, lease or option, the conduct of surface coal mining and reclamation operations;

Lands that the Department determines, on the basis of additional cropland history of the surrounding lands and the lands under

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consideration that the permit area is clearly cropland but falls outside the specific five (5)-year-in-ten (10) criterion, in which case the regulations for prime farmland shall be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

Lands that would likely have been used as cropland for any five (5) out of the last ten (10) years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means, for purposes of implementing 62 Ill. Adm. Code 1762 and 1764, important historic, cultural, and scientific areas that could be damaged or be destroyed by surface coal mining operations. Examples of historic lands include archaeological and paleontological sites, National Historic Landmark sites, sites listed on or eligible for listing on a State or National Register of Historic Places, sites having religious or cultural significance to native Americans or religious groups or sites for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent danger to the health and safety of the public" *means the existence of any condition or practice, or any violation of a permit or other requirements of the State Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.* Section 1.03(a)(7) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7901.03(a)(7)) [225 ILCS 720/1.03(a)(7)].

"Impounding structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semi-liquid

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material.

"Impoundment" means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's duties and the coal mining operation in which the spouse, minor children, or other resident relatives hold a financial interest.

"In situ processes" means activities conducted in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Institute" means the Department of Energy and Natural Resources or such other agency as designated by the Director in accordance with Section 7.03 of the State Act.

"Interagency Committee" means the Interagency Committee on Surface Mining Control and Reclamation Section 1.05 of the State Act created.

"Intermittent stream" means:

A stream or reach of a stream that drains a watershed of at least one (1) square mile; or

A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment in violation of the State Act or these regulations that cannot be corrected by actions of the applicant.

"Land capability" means the soils' premining capabilities based on the United States Department of Agriculture, Soil Conservation Service classification system as found in Agriculture Handbook No. 210, Land-Capability Classification, (published in 1973) as interpreted from the soils map for sustained production of commonly cultivated crops or for the production of permanent vegetation.

"Land eligible for remining" means those lands that would otherwise be eligible for expenditures under Section 402(g)(4) or Section 404 of

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the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(g)(4), 1234).

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the Department in accordance with 62 Ill. Adm. Code 1780.23.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Allowable support facilities include access roads, farm buildings, hedgerows, erosion control structures such as grassed waterways, terraces and sediment ponds, and other incidental facilities related to cropland management, except that no facility, other than erosion control structures, may be located on prime farmland.

"Pastureland" means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by the livestock or occasionally cut and cured for livestock feed. Allowable support facilities include access roads, farm buildings, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, water impoundments used for stock watering, and other incidental facilities related to pasture management.

"Grazingland" means land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

"Forestry" means land used or managed for the long-term production of wood, wood fiber, or wood-derived products. Allowable support facilities include water impoundments, access and fire control lanes, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, and other incidental facilities related to sound multiple use management of the forest resource.

"Residential" means land used for single- and multiple-family housing, mobile home parks, and other residential lodgings.

"Industrial/Commercial" means land used for:

Extraction or transformation of materials for fabrication of products, wholesaling of products, or for long-term storage of products. This includes all heavy and light manufacturing facilities.

Retail or trade of goods or services, including hotels,

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motels, stores, restaurants, and other commercial establishments.

"Recreation" is land used for public or private leisure-time use, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses. Allowable support facilities include water impoundments, access roads, and other incidental facilities related to the recreational development of the area.

"Fish and wildlife habitat" is land dedicated wholly or partially to the production, protection, or management of fish or wildlife. Allowable support facilities include water impoundments, access lanes, erosion control structures such as grassed waterways, downdrains, terraces and sediment ponds, and other incidental facilities related to sound fish and wildlife management practices.

"Developed water resources" includes land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply. Where appropriate, developed water resources are considered a joint or seasonal use with cropland, pastureland, forestry, recreation and fish and wildlife habitat.

"Undeveloped land or no current use or land management" includes land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession. A post-mining designation of undeveloped land shall not be allowed for any land which is proposed to be affected by the mining operation.

"Mining operations or surface coal mining operations" means both surface mining operations and underground mining operations. Section 1.03(a)(11) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7901.03(a)(11)) [225 ILCS 720/1.03(a)(11)].

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at one hundred and five degrees (105° C).

"MSHA" means the Mine Safety and Health Administration of the United States Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

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"Natural hazard lands" means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Noxious plants" means any plant species listed as a "noxious weed" under regulations authorized by the Illinois Noxious Weed Law (Ill. Rev. Stat. 1991, ch. 5, pars. 951 et seq.) [505 ILCS 100]; any plant species whose seed is listed as a "prohibited (primary) noxious weed" or "restricted" (secondary) noxious weed" or "weed seeds" under regulations authorized by the Illinois Seed Law (Ill. Rev. Stat. 1991, ch. 5, pars. 401 et seq.) [505 ILCS 110/1]; or any plant which the Department of Agriculture has declared a pest under the Illinois Pesticide Act (Ill. Rev. Stat. 1991, ch. 5, pars. 801 et seq.) [415 ILCS 60].

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Office" means the Office of Surface Mining Reclamation and Enforcement, U.S.. Department of the Interior.

"Operator" means any person engaged in coal mining who removes or intends to remove more than two hundred and fifty (250) tons of coal from the earth or from coal refuse piles by mining within twelve (12) consecutive calendar months in any one location.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Ownership or control link" means any relationship included in the definition of owned or controlled or owns or controls at 62 Ill. Adm. Code 1773.5(a) and (b) or in the violations review provisions of 62 Ill. Adm. Code 1773.15(b). It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" unless such presumption has been successfully rebutted under the provisions of 62 Ill. Adm. Code 1773.24 and 1773.25.

"Perennial stream" means a stream that flows continuously during all of the calendar year or part of a stream that flows continuously during all of the calendar year. The stream or part of a stream flows

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continuously as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance bond" means a surety bond, collateral bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Federal Act, the State Act, 62 Ill. Adm. Code 1700 - 1850, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means those decisions or actions, which if an employee performed or did not perform would affect the programs under the State Act.

"Permanent diversion" means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the Department and other appropriate State and Federal agencies.

"Permanent impoundment" means an impoundment which the Department approved and, if required, is approved by other State and Federal agencies for retention as part of the post-mining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations which the Department issues pursuant to the State program.

"Permit area" means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the Department. This area shall include all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit indicated on the approved map which the operator submitted with the operator's application and which is required to be bonded under 62 Ill. Adm. Code 1800 and where the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided, that areas adequately bonded under another valid permit may be excluded from a permit area. The permit area excludes the area defined in these regulations as the shadow area.

"Permit term" *means the period during which the permittee may engage in mining and reclamation operations under the permit.* Section 1.03(a)(18) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7901.03(a)(18)) [225 ILCS 720 1.03(a)(18)].

"Permittee" means a person holding or required by the State Act or these regulations to hold a permit to conduct surface coal mining and reclamation operations issued by a Department pursuant to a State program.

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"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, general partnership, limited partnership, business trust association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization or any agency, unit, or instrumentality of Federal, State or local government including any publicly-owned utility or publicly-owned corporation of Federal, State or local government.

"Person having an interest which is or may be adversely affected" or "Person with a valid legal interest" shall include any person:

Who uses any resources of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department; or

Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the Department.

"Placeland" means undisturbed land before any mining activity.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, precipitation event also includes that quantity of water emanating from snow cover as snow-melt in a limited period of time.

"Previously mined area" means land that had been mined before August 3, 1977.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (43 Fed. Reg. 4031 (1978)) and which have historically been used for cropland as that phrase is defined above.

"Principal shareholder" means any person who is the record or beneficial owner of ten (10) percent or more of any class of voting stock.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface and mineral estates within the permit area and the mineral estate within the shadow area.

"Public building" means any structure that is owned or leased and principally used by a public government agency for public business or meetings.

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"Public office" means a facility under the control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

"Publicly-owned park" means a public park that is owned by a Federal, State or local governmental entity.

"Public road" means a road:

which has been designated as a public road pursuant to the law of the jurisdiction in which it is located;

which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction;

for which there is substantial (more than incidental) public use; and

which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Qualified registered professional engineer" means a civil engineer, mining engineer, environmental engineer or general engineer meeting the requirements of Section 9 of The Illinois Professional Engineering Act (Ill. Rev. Stat. 1991, ch. 111, par. 5112) [225 ILCS 325/12].

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions which these regulations require to

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restore mined land to a post-mining land use which the Department has approved. These actions do not include subsidence control measures conducted in the shadow area to restore damaged land to pre-mining capability.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the ten (10)-year, twenty-four (24)-hour precipitation event would be that twenty-four (24)-hour precipitation event expected to occur on the average once in ten (10) years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by Department-approved crop production methods. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regional director" means Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement or Regional Director of the Federal Office of Surface Mining Reclamation and Enforcement's representative.

"Regulatory program" means Illinois' permanent regulatory program which the Office of Surface Mining Reclamation and Enforcement approved and set forth in 30 CFR 913.1-913.16 (1991). 30 CFR 913.1-913.16 do not include any subsequent amendments or editions.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

"Responsible land management" means that combination of preparation, maintenance, fertilization and tilling of land capable of producing row crops which would be practiced by a person in the business of producing row crops on unmined land in the same region on the same, or similar, soil type as the mined land being managed, which practices can reasonably be expected to continue after mining and reclamation are completed, as determined by the Department.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or

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coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haulroads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces.

"Secretary" means the Secretary of the Interior or the Secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Shadow area" means any area beyond the limits of the permit area in which underground mine workings are located. This area includes all resources above and below the coal that are protected by the State Act that may be adversely impacted by underground mining operations including impacts of subsidence.

"Significant forest cover" means an area where the plant community consists predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air or water resources" means:

An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life;

An environmental harm is imminent if a condition, practice, or violation exists which:

Is causing such harm; or

May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 8.06(c) of the State Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7908.06(c)) [225 ILCS 720/8.06(c)].

An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Siltation structure" means a device, or devices, used to remove, collect or otherwise control runoff so that resulting outflow will

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meet applicable effluent standards.

"Slope" means average inclination of a surface measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four (4) master soil horizons are:

A horizon. The uppermost mineral layer, often called the surface soil or topsoil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E horizon. The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from the underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B horizon. The layer that typically is immediately beneath the A and E horizons and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 62 Ill. Adm. Code 1785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Act" means the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, pars. 7901.01 et seq.) [225 ILCS 720].

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"State regulatory program" means the Illinois program which the Secretary approved on June 1, 1982 pursuant to 30 CFR 732.1 through 732.15.

"State violation notice" means a violation notice issued by a state regulatory authority or by another agency or instrumentality of State government.

"Steep slope" means any slope of more than twenty (20) degrees or such lesser slope as the Department may designate after consideration of such regional characteristics as soil and climate.

"Substantially disturb" means, for purposes of coal exploration, to impact significantly upon land, air or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or of the right to mine it without an existing mine alone, as described in the above example, are not sufficient to constitute substantial legal and financial commitments.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over the coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface coal mining and reclamation operations", or "mining and reclamation operations", means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations".

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"Surface coal mining operations", or "mining operations" means:

Activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 of the Federal Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce, or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine-site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed sixteen and two-thirds (16 2/3) per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 512 of the Federal Act; and provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

The areas upon which the activities described in the first paragraph of this definition occur or where those activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Surface mining operations" means activities conducted on the surface of lands in connection with a surface coal mine or surface operations. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, coal recovery from coal waste disposal areas, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; and the areas on which such activities occur or where such activities disturb the natural land surface. Such areas include any adjacent land the use of

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which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities. Section 1.03(a)(24) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7901.03(a)(24)) [225 ILCS 720/1.03(a)(24)].

"Suspended solids or nonfilterable residue, expressed as milligrams per liter", means any materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

"Temporary impoundment" means an impoundment which is used during coal exploration or surface coal mining and reclamation operations and which the Department has not approved to remain after reclamation.

"Ton" means two thousand (2000) pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four (4) master soil horizons.

"Toxic - forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to living organisms or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill or injure, or impair living organisms commonly present in the area that might be exposed to it.

"Transfer, assignment or sale of permit rights" means a change in ownership or other effective control over the right to conduct surface

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coal mining operations under a permit which the Department issued.

"Underground development waste" means waste rock mixtures resulting from development of areas for underground mining activities.

"Underground mining activities" means a combination of:

Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

Underground operations such as underground construction, operation, and reclamation of shafts, edits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Underground mining operations" means the underground excavation of coal; and

surface operations incident to the underground extraction of coal, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas on which are sited support facilities including hoist and ventilation ducts, areas used for the storage and disposal of waste, and areas on which materials incident to underground mining operations are placed; and

underground operations incident to underground excavation of coal, such as underground construction, operation, and reclamation of shafts, edits, underground support facilities, in situ processing, and underground mining, hauling, storage, or blasting. Section 1.03(a)(26) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7901.03(a)(26)) [225 ILCS 720/1.03(a)(26)].

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of the operator's permit or any requirement of the State Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the State due to indifference, lack of diligence, or lack of reasonable care. Section 1.03(a)(27) of the Surface Coal Mining Land Conservation and Reclamation Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7901.03(a)(27)) [225 ILCS 720/1.03(a)(27)].

"Valid existing rights" means:

Except for haul roads, that a person possesses valid existing rights for an area protected under Section 7.01 of the State Act (Ill. Rev. Stat. 1991, ch. 96 1/2, par. 7907.01) [225 ILCS 720/7.01] on August 3, 1977, if the application of any of the prohibitions contained in that Section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Section 15 of the Illinois Constitution of 1970 or both.

For haul roads:

A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or at the time of the designation of an area, as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in Section 7.01 of the State Act; or

Any other road in existence as of August 3, 1977, or at the time of the designation of an area as to which a conflict is alleged, as part of a national system listed in Section 7.01 of the State Act, or at the time of coming into existence, within the prohibited distance of a structure, road, cemetery or other activity listed in Section 7.01 of the State Act.

Where an area comes under the protection of Section 7.01 of the State Act after August 3, 1977, valid existing right shall be found if:

On the date the protection comes into existence, a validly authorized surface coal mine operation exists on that area; or

The prohibition caused by Section 7.01 of the State Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution or Article 1, Section 15 of Illinois Constitution of 1970, or both.

Interpretation of the terms of the document relied upon to establish valid existing rights shall be based either upon Illinois case law concerning interpretation of documents conveying mineral rights or, where Illinois case law is lacking, upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

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"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than twenty (20) degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten (10) degrees.

"Violation notice" means any written notification, ~~by--letter,--memorandum,--legal--or--administrative--pleading,--or--other---written communication,--from--a-governmental-entity,-telling-of-a-violation-of law,~~ from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the Act; any federal regulation promulgated pursuant thereto; a State program; or any federal or state law or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Wetland" means land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even wher all three wetland parameters are not present.

"Willful violation" means a deliberate act or omission which violates the State Act, these regulations, or any permit condition which the State Act requires.

(Source: Amended at 19 Ill. Reg. _____, effective _____)

DEPARTMENT OF PUBLIC AID

NOTICE OF PUBLIC INFORMATION

NOTICE OF HOSPITAL REIMBURSEMENT CHANGES

The Illinois Department of Public Aid is proposing to make State owned hospitals operated by the Department of Mental Health and Developmental Disabilities eligible for disproportionate share payments. This change is being proposed to ensure that access to health care is maintained and enhanced. The implementation of these proposed changes is to occur on March 1, 1995. A brief description and estimate of the fiscal year 1995 expenditures follow.

State owned hospitals operated by the Department of Mental Health and Developmental Disabilities shall be eligible for Disproportionate Share (DSH) payments effective for services provided on or after March 1, 1995. These payments shall be in addition to the reimbursement rates currently paid for services provided by these facilities. The payment amount that shall be made to each facility will be determined according to a methodology developed by the Department of Public Aid. This methodology shall be consistent with current disproportionate share formulas and include mechanisms to ensure compliance with OBRA'93 guidelines and federal disproportionate share spending limitations.

These changes are estimated to enhance federal financial participation by approximately $8.5 million in State fiscal year 1995.

If any person or entity wishes to comment on these changes, they may do so by sending comments to:

Illinois Department of Public Aid
Bureau of Rules and Regulations
100 South Grand Avenue East, Third Floor
Springfield, Illinois 62762-0001

Information regarding these changes may be reviewed at any local Public Aid office in counties other than Cook County. In Cook County, information on these changes may be reviewed at the Office of the Director, 310 South Michigan Avenue, Suite 1700, Chicago, Illinois. The information may be reviewed at all offices Monday through Friday from 8:30 A.M. until 5:00 P.M.

The Department intends to submit emergency rules to implement these changes for publication in the Illinois Register as soon as practicable. This notice is being provided in accordance with federal requirements at 42 CFR 447.205.

JOINT COMMITTEE ON ADMINISTRATIVE RULES
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of February 7, 1995 through February 13, 1995, and have been scheduled for review by the Committee at its March 14, 1995 meeting. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield, IL 62706.

Second Notice Expires	Agency and Rule	Start of First Notice	JCAR Meeting
3/25/95	Department of Conservation, Commercial Fishing and Musseling in Certain Waters of the State (17 Ill Adm Code 830)	12/23/94 18 Ill Reg 17946	3/14/95
3/26/95	Department of Children and Family Services, Department of Children and Family Services Employee Conflict of Interest (89 Ill Adm Code 437)	5/20/94 18 Ill Reg 7579	3/14/95

PROCLAMATIONS

95-025
BLUE RIBBON WEEK

Whereas, child abuse is a serious and growing problem affecting nearly 3 million of our nationFEs children annually, within whose hands we will eventually entrust the future of our nation; and

Whereas, this social malignancy respects no racial, religious, class, or geographic boundaries, and in fact, has been declared a national emergency; and

Whereas, there is an evident need to increase public awareness of the problem of child abuse; and to address this issue, the National Exchange Club and the National Exchange Club Foundation for the Prevention of Child Abuse have developed a Quarters for Kids Blue Ribbon Campaign; Exchange Club members are distributing blue ribbon pins to the general public as a symbol and reminder to us all that child abuse is a tragedy that affects each and every one of us; and

Whereas, the National Exchange Club is an all-volunteer service organization comprised of 1,100 Exchange Clubs throughout the United States and Puerto Rico, with 36,000 men and women all dedicated to making America a better place to live through a variety of community service projects, and one national project, the Prevention of Child Abuse;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim April 2-8, 1995, as BLUE RIBBON WEEK in Illinois and urge citizens of this state to support the efforts of these organizations by becoming involved in local child abuse prevention activities and wearing a blue ribbon pin.

Issued by the Governor January 26, 1995.

Filed with Secretary of State February 10, 1995.

95-026
CHICAGO BUSINESS OPPORTUNITY DAYS

Whereas, the 28th Annual Chicago Business Opportunity Fair, which is of special interest to Chicago-based businesses, will be held March 7-8, 1995; and

Whereas, the fair will provide minority suppliers and purchasing personnel from major buying organizations the opportunity to meet and exchange information about mutual buying and selling needs; and

Whereas, William A. Osborn, president and chief operating officer of Northern Trust Corporation & The Northern Trust Company, will serve as chairman of the fair's Sponsor's Committee; and

Whereas, the 28th Annual Chicago Business Opportunity Fair assists in advancing the year-round efforts of the Chicago Minority Business Development Council, Inc.--an organization devoted to stimulating minority purchasing in Chicago and the sponsor of the fair; and

Whereas, the Minority Business Committee of the Chicago Minority Business Development Council will hold its 17th Annual Awards Program and Celebration on March 7, 1995, in honor of public and private sector representatives for their contributions to minority suppliers' growth and development;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim April 11-13, 1994, as CHICAGO BUSINESS OPPORTUNITY DAYS in Illinois.

Issued by the Governor January 26, 1995.
Filed with Secretary of State February 10, 1995.

95-027
ELKAY MANUFACTURING COMPANY DAY

Whereas, the Elkay Manufacturing Company marks an important corporate milestone on January 26, 1995, recording the start of its 75th year in business; and

Whereas, from its earliest leadership of father and son founders, Leopold and Louis Katz, and as a manufacturer of handmade German silver sinks for use in butlerFEs pantries, Elkay has grown geometrically; and

Whereas, the firm has expanded and is noted for its residential and commercial sinks, faucets, water coolers, and drinking fountains and recently has become a factor in the kitchen cabinet business; and

Whereas, the company is still family owned and operated and has 2,300 employees and nine manufacturing plants; and

Whereas, today, approximately 75 percent of all kitchen sinks sold in the United States are stainless steel, and as the industry leader, ElkayFEs sales reflect its industry leadership position; and

Whereas, the firmFEs water coolers and drinking fountains make it a leading manufacturer of water delivery products; and

Whereas, throughout its 75-year history, Elkay has retained a strong commitment to high standards, quality, steady growth, continuing innovation in the products it manufactures, and a strong awareness of both the industryFEs and the consumersFE needs;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim January 26, 1995, as ELKAY MANUFACTURING COMPANY DAY in Illinois.

Issued by the Governor January 26, 1995.
Filed with Secretary of State February 10, 1995.

95-028
LABOR-MANAGEMENT COOPERATION WEEK

Whereas, the fundamental mission of the Illinois Labor-Management Cooperation Committee is to promote and maintain an image of positive labor-management relations in the state; and

Whereas, rapid technological innovation, changing demographics, and foreign competition have placed considerable stress on both labor and management in Illinois; and

Whereas, the Cooperation Committee has adopted an ambitious agenda that is responsive to the major forces driving change in Illinois' labor market; and

Whereas, cooperation and communication have proven to be vital components for companies as they respond to current and future challenges with bold new initiatives; and

Whereas, the Illinois Labor-Management Cooperation Committee promotes the creation of Labor-Management Partnerships in Illinois workplaces; and

Whereas, the Illinois Labor-Management Cooperation Committee and the Illinois Department of Commerce and Community Affairs will cosponsor the fifth State Labor-Management Conference March 23 in Moline to showcase cooperative labor-management activities in our state;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim

March 19-25, 1995, as LABOR-MANAGEMENT COOPERATION WEEK in Illinois in recognition of the strong cooperative labor-management environment which is vital to our continuing economic development and growth.

Issued by the Governor January 26, 1995.
Filed with Secretary of State February 10, 1995.

95-029
NUTRITION MONTH

Whereas, the Illinois Department of Public Health, along with nutrition professionals throughout Illinois and the United States, are promoting good nutrition; and

Whereas, there is a need to encourage our citizens to practice sound eating habits throughout the year in order to achieve optimum health; and Whereas, more than 25 percent of Illinoisians are at risk because of obesity, nearly 23 percent consume a high fat diet, and only 17 percent eat the recommended five or more servings of fruit and vegetables a day; and

Whereas, in keeping with the theme of the national observance, "Eat Right, America" - all Illinoisians should become aware that proper nutrition is vital at all stages of life;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim March 1995 as NUTRITION MONTH in Illinois and urge all Illinois residents to increase their awareness of the significance of good nutrition.

Issued by the Governor January 26, 1995.
Filed with Secretary of State February 10, 1995.

95-030
SCHOOL PSYCHOLOGISTS ASSOCIATION WEEK

Whereas, for more than 40 years, Illinois has been recognized as a leader in providing school programs and services for children with physical, mental, emotional, or educational problems; and

Whereas, Illinois school psychologists have demonstrated their concern for children's rights to free and appropriate public education tailored to their individual capabilities; and

Whereas, the school psychology profession and the Illinois School Psychologists Association have dedicated their efforts to serving the mental health and educational needs of all children;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim March 19-26, 1995, as SCHOOL PSYCHOLOGISTS ASSOCIATION WEEK in Illinois and commend the school psychology professionals on their dedication to the health and well-being of our students.

Issued by the Governor January 26, 1995.
Filed with Secretary of State February 10, 1995.

95-031
WE REMEMBER, WE CARE FOR INDIGENT PERSONS DAY

Whereas, poverty, homelessness, and anonymity are ever present realities in our society; and

Whereas, many citizens, visitors, and strangers, at any given time, are victims of these tragic conditions that often lead to suffering, abandonment,

and death; and

Whereas, various individuals, groups, and organizations (public, private, and religious) make heroic efforts to remember and care for these indigent, disabled, lonely, and unknown persons who live and die among us; and

Whereas, the unselfish acts of these caregivers and the contributions to our society of carereceivers are not always known and formally recognized; and

Whereas, citizens of the State of Illinois are encouraged to participate in various community awareness exhibits and seminars, to visit the sick, elderly, confined, orphaned and dying, attend interfaith memorial services, and visit and preserve the Potter's Field in their area; and

Whereas, the hope and noble desire of all is to share equally in the blessing of liberty, justice, and prosperity granted by Divine Providence;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim May 24, 1995, as WE REMEMBER, WE CARE FOR INDIGENT PERSONS DAY in Illinois.

Issued by the Governor January 26, 1995.

Filed with Secretary of State February 10, 1995.

95-032
YOUTH SOCCER DAY

Whereas, on March 2, 1995, the U.S. Youth Soccer National Workshop opens at the Chicago Sheraton in Illinois; and

Whereas, the U.S. Youth Soccer National Workshop is the largest youth soccer convention in the United States, bringing thousands of visitors to Illinois; and

Whereas, the Illinois Youth Soccer Association is the grassroots program of the U.S. Youth Soccer Association and the U.S. Soccer Federation; and

Whereas, the Illinois Youth Soccer Association and U.S. Youth Soccer provide free programs, events, and sponsorship to promote inner city soccer activities for youngsters; and

Whereas, on Saturday, March 4, 1995, coaches who have provided community services will be honored at an awards luncheon during the U.S. Youth Soccer National Workshop;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim March 4, 1995, as YOUTH SOCCER DAY in Illinois.

Issued by the Governor January 26, 1995.

Filed with Secretary of State February 10, 1995.

95-033
AMERICAN HISTORY MONTH

Whereas, on July 17, 1959, the 71st General Assembly specified that the month of February of each year be designated as American History Month in the State of Illinois, a month set apart to promote the study of American history; and

Whereas, the United States is one of the greatest industrial countries of the world. Its mineral and agricultural resources are tremendous, and it has nearly all the resources necessary for self-sufficiency; and

Whereas, the United States has been referred to as the FEmelting potFE of nations, as its population represents an influx of people from countries throughout the world; and

Whereas, the government of the United States is that of a federal republic, set up by the Constitution adopted by the Federal Constitutional Convention of 1787; and

Whereas, Americans should reflect upon their great heritage through the study of American history;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 1995 as AMERICAN HISTORY MONTH in Illinois. I urge all citizens to take note of our nationFEs heritage and growth and the individuals who have contributed so much to American history.

Issued by the Governor January 31, 1995.

Filed with Secretary of State February 10, 1995.

95-034
DONALD LYNN DAY

Whereas, Major General Donald W. Lynn has served with distinction as the Illinois Adjutant General since November 1991 and has served in the National Guard since 1955; and

Whereas, General Lynn led the National Guard of Illinois during the Great Mississippi River Flood of 1993, the Chicago Tunnel Flood of 1992, and at other times when the safety of our citizens needed the protection of the members of the Guard; and

Whereas, General Lynn found innovative new roles for the National Guard, establishing the nationally-recognized LincolnFEs Challenge and First Choice programs for youths, along with other services and initiatives; and

Whereas, General LynnFEs military career was highlighted by exemplary service in several positions, including commander of the 258th Supply and Service Company and the 232nd Supply and Service Battalion; State Procurement Officer; Comptroller; Deputy Director of Logistics; commander, 66th Brigade, 47th Infantry Division; Chief of Staff; and Assistant Adjutant General; and

Whereas, General LynnFEs decorations and awards include the Legion of Merit with Oak Leaf Cluster, the Meritorious Service Medal with three Oak Leaf Clusters, the Army Commendation Medal, the Army Achievement Medal, the National Defense Medal, the Army Reserve Components Achievement Medal, the Humanitarian Service Medal, the Armed Forces Reserve Medal, the Army Service Ribbon, Illinois Long and Honorable Service Medal, Illinois Military Attendance Ribbon, and the Illinois State Active Duty Award;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 4, 1995, as DONALD LYNN DAY in Illinois and express to General Lynn, on behalf of all the citizens of Illinois, our deepest thanks and respect for all that he has done for the Land of Lincoln and its people and offer General Lynn our best wishes as he continues serving his fellow citizens and veterans in his new leadership role at the Quincy Veterans Home.

Issued by the Governor January 31, 1995.

Filed with Secretary of State February 10, 1995.

95-035
FOUR CHAPLAINS SUNDAY

"Surely the astounding and beautiful fact about human existance is that transfiguring times may come to the commonest or simplest person, that suddenly some undistinguished, negligible man or woman who never said or did anything

notable before may be caught up in unaccountable glory and made a beacon for mankind." --St. John Ervine

Whereas, one of the most inspiring acts of heroism in World War II will be commemorated on February 5. That date marks the 52nd anniversary of the historic occasion of "Four Chaplains Sunday"; and

Whereas, in a final act of love and dedication, four chaplains representing the Methodist, Roman Catholic, Jewish, and Dutch Reformed faiths, gave their own life jackets, the only ones that remained, to four fearful American servicemen and directed the young soldiers to lifeboats. The four United States Army chaplains then sank with the torpedoed U.S.S. Dorchester in the North Atlantic, with their arms linked about each other while they prayed together; and

Whereas, each year a memorial program is sponsored by the Combined Veterans Association of Illinois. This year it is hosted by the Catholic War Veterans;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 5, 1995, as FOUR CHAPLAINS SUNDAY in Illinois in an effort to perpetuate the memory of these men who so convincingly demonstrated their boundless love for others.

Issued by the Governor January 31, 1995.

Filed with Secretary of State February 10, 1995.

95-036
LAND SURVEYORS' MONTH

Whereas, land surveying is one of the oldest technical services of mankind and our complex civilization depends more and more on surveyorsFE skills and accuracy to determine property rights and methods of design and construction; and

Whereas, the surveying skills of George Washington, the Commander-in-Chief of our Revolutionary Forces, may have had considerable influence on the winning of our national independence since Washington, a land surveyor before the war, directed the planning of military operations and selected the battle sites; and

Whereas, more than 80 years later when the states were threatened by a cruel division, another great president and former surveyor, Abraham Lincoln, was recognized as the "Savior of Our Country" after directing the campaigns that preserved our nation;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 1995 as LAND SURVEYORS' MONTH in Illinois in recognition of the two "Land Surveyor Presidents," George Washington and Abraham Lincoln, whose birthdays are observed this month.

Issued by the Governor January 31, 1995.

Filed with Secretary of State February 10, 1995.

95-037
SELF-ESTEEM MONTH

Whereas, an understanding of oneFEs talents, innate worth, intuitive power, and ability to achieve and contribute are essential elements of self-esteem and

Whereas, self-esteem begets confidence, motivation, responsibility, and other characteristics that enable people to do their best and reach their full potential; and

Whereas, self-esteem results in positive social and economic benefits that help foster a more cooperative, productive, and caring society; and

Whereas, self-esteem enables people to strive for improvement and quality - - quality in our work, creative endeavors, relationships, intellectual pursuits, daily experiences, and overall lives; and

Whereas, Self-Esteem Month is celebrated in Illinois to focus on the need to promote self-esteem statewide; and

Whereas, this yearFEs observance will emphasize self-esteem, along with personal and social responsibility, as keys to a bright and successful future for all people;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 1995 as SELF-ESTEEM MONTH in Illinois to emphasize these qualities as significant factors in the health, happiness, and productivity of all Illinoisans.

Issued by the Governor January 31, 1995.

Filed with Secretary of State February 10, 1995.

95-038
CHRISTIAN HERITAGE WEEK

Whereas, religious holidays, festivals, and celebrations add to the cultural mosaic of our state; and

Whereas, churches are a functional part of the communities in our stet, often providing charitable assistance to our citizens; and

Whereas, Thanksgiving week is an appropriate time to center attention on the religious heritage of our state and nation;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim November 19-25, 1995, as CHRISTIAN HERITAGE WEEK in Illinois.

Issued by the Governor February 1, 1995.

Filed with Secretary of State February 10, 1995.

95-039
DEHYDRATION AWARENESS MONTH

Whereas, dehydration, a potentially deadly condition, is often left untreated or unrecognized; and

Whereas, the United States Center for Disease Control says that more than 200,000 U.S. children -- most less than one year old -- are hospitalized each year due to dehydration; and

Whereas, public awareness of the warning signs of dehydration can save lives; Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim Febraury 1995 as DEHYDRATION AWARENESS MONTH in Illinois.

Issued by the Governor February 1, 1995.

Filed with Secretary of State February 10, 1995.

95-040
LITHUANIAN INDEPENDENCE DAY

Whereas, Lithuania history as a nation dates back to the 13th

century; and

Whereas, Lithuania has courageously struggled for independence for more than 50 years; and

Whereas, Lithuanian-Americans have played a significant part in the progress of Illinois and have proudly shared their culture, heritage, and talents with our state; and

Whereas, we are grateful for their contributions to our state and our individual lives; and

Whereas, many events are being held to commemorate the 77th anniversary of LithuaniaFEs independence;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 16, 1995, as LITHUANIAN INDEPENDENCE DAY in Illinois, commemorating the anniversary of this special day.

Issued by the Governor February 1, 1995.

Filed with Secretary of State February 10, 1995.

95-041
MACOMB ROTARY CLUB DAY

Whereas, for more than 75 years the Macomb Rotary Club has contributed to and served the Macomb area through community service projects, financial support of community programs, and charities; and

Whereas, the Macomb Rotary Club has sponsored foreign exchange students for many years to promote global cultural awareness and understanding; and

Whereas, the Macomb Rotary Club has participated in Rotary InternationalFEs worldwide efforts to eradicate polio through the Polio Plus Program; and Whereas, for 75 years the Macomb Rotary Club has promoted the highest professional standards among its members; and

Whereas, the Macomb Rotary Club has promoted goodwill and built better friendships; and

Whereas, the Macomb Rotary ClubFEs efforts have continued to make Illinois a state we are all proud to call our home;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 4, 1995, as MACOMB ROTARY CLUB DAY in Illinois and offer my congratulations on its 75th anniversary.

Issued by the Governor February 2, 1995.

Filed with Secretary of State February 10, 1995.

95-042
SAVE A LIFE WEEK

Whereas, Cardiopulmonary Resuscitation (CPR) and First Aid education can significantly reduce death and disabling injuries; and

Whereas, Save A Live FoundationFEs mission is to promote training and education regarding life-saving techniques; and

Whereas, the administration of CPR and First Aid helps save lives by maintaining life support until professionals arrive; and

Whereas, on February 19-25, many Illinois hospitals will provide residents of their communities with training and certification on CPR and First Aid;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 19-25, 1995, as SAVE A LIFE WEEK in Illinois.

Issued by the Governor February 2, 1995.

Filed with Secretary of State February 10, 1995.

95-043
SCHOOL COUNSELING WEEK

Whereas, school counselors are employed in public and parochial schools to help students reach their fullest potential as human beings; and

Whereas, school counselors are concerned with students being better able to understand themselves, their abilities, strengths, and talents as they relate to career development and awareness; and

Whereas, counselors help parents focus on ways to further the positive educational, personal, and social growth of their children; and

Whereas, counselors care about uniting teachers, parents, administrators, special service personnel, and the community to form an effective counseling program for students; and

Whereas, counseling is seen as an essential part of the educational process for each student as they adjust to our very complex society;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim February 6-10, 1995, as SCHOOL COUNSELING WEEK in Illinois.

Issued by the Governor February 2, 1995.

Filed with Secretary of State February 10, 1995.

95-044
SEED MONTH

Whereas, the abundance of Illinois crops relies on fertile soil, diligent farmers, and high-quality seeds; and

Whereas, to ensure that seeds are of the highest quality, there must be agricultural -minded seed producers, conscientious inspectors, skilled technicians, and concerned dealers; and

Whereas, agriculture and the seed industry significantly contribute to our stateFEs economy with value-added products marketed throughout the world; and

Whereas, the Bureau of Agricultural Products Inspection within the Illinois Department of Agriculture tests the purity and germination of seeds, validates the accuracy of product labels, and cooperates with the Illinois Crop Improvement Association, the stateFEs official seed-certifying agency, an independent, nonprofit organization; and

Whereas, in cooperation with educational and regulatory agencies, the Illinois Seed Dealers Association has sustained an informed membership, the latest research developments, the production of high-quality seed, and has developed an effective seed program advocating pertinent legislation;

Therefore, I, Jim Edgar, Governor of the State of Illinois, proclaim April 1995 as SEED MONTH in Illinois in appreciation of the seed industryFEs contributions to supplying food and fiber to the world through the production of Illinois crops.

Issued by the Governor February 2, 1995.

Filed with Secretary of State February 10, 1995.

ACTION CODES

A - Adopted Rule	P - Proposed Rule
AR - Adopted Repealer	PF - Prohibited Filing Order by JCAR*
C - Notice of Corrections	PP - Peremptory or Court Ordered Rules
CC - Codification Changes	PR - Proposed Repealer
E - Emergency Rule	R - Refusal to meet JCAR* Objection
ER - Emergency Repealer	RC - Statement of Recommendation
M - Modification to meet JCAR* Objections	S - Suspension ordered by JCAR*
O - JCAR* Statement Of Objections	W - Withdrawal to meet JCAR* Objections
RQ - Request for Correction	MR - Modification and Refusal
EC - Expedited Corrections	

*Joint Committee on Administrative Rules

ALL RULES ARE LISTED BY PART NUMBER AND HEADING ONLY. (FOR ACTION ON SPECIFIC SECTIONS, PLEASE REFER TO THE SECTIONS AFFECTED INDEX.) IF THERE ARE ANY QUESTIONS, PLEASE CONTACT THE ADMINISTRATIVE CODE DIVISION AT (217) 782-7017.

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TYPE OF RULE MAKING

am = amend to existing Section
cc = codification changes
n = New section
r = repeal of existing Section
re = recodified
# = renumbered

ACTION CODE

A = Adopted Rule
E = Emergency
P = Proposed Rule
PP = Peremptory
M = Modification
W = Withdrawl
CC = Codification Changes
RQ = Request for Correction
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905.15 am (P-22359/93; O-18405/94;W-287)
905.20 am (P-22359/93; O-18405/94;W-287)
905.30 am (P-22359/93; O-18405/94;W-287)
905.40 am (P-22359/93; O-18405/94;W-287)
905.50 am (P-22359/93; O-18405/94;W-287)
905.55 n (P-22359/93; O-18405/94;W-287)
905.60 am (P-22359/93; O-18405/94;W-287)
905.70 am (P-22359/93; O-18405/94;W-287)
905.80 am (P-22359/93; O-18405/94;W-287)
905.90 am (P-22359/93; O-18405/94;W-287)
905.100 am (P-22359/93; O-18405/94;W-287)
905.110 am (P-22359/93; O-18405/94;W-287)
905.120 am (P-22359/93; O-18405/94;W-287)
905.125 n (P-22359/93; O-18405/94;W-287)
905.130 am (P-22359/93; O-18405/94;W-287)
905.140 am (P-22359/93; O-18405/94;W-287)
905.150 am (P-22359/93; O-18405/94;W-287)
905.160 am (P-22359/93; O-18405/94;W-287)
905.170 am (P-22359/93; O-18405/94;W-287)
905.180 am (P-22359/93; O-18405/94;W-287)
905.190 am (P-22359/93; O-18405/94;W-287)
905.200 am (P-22359/93; O-18405/94;W-287)
905.210 r (P-22359/93; O-18405/94;W-287)
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II.C am (P-22359/93; O-18405/94;W-287)
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II.E am (P-22359/93; O-18405/94;W-287)
II.F am (P-22359/93; O-18405/94;W-287)
II.G am (P-22359/93; O-18405/94;W-287)
II.H am (P-22359/93; O-18405/94;W-287)
II.I am (P-22359/93; O-18405/94;W-287)
II.J am (P-22359/93; O-18405/94;W-287)
II.K am (P-22359/93; O-18405/94;W-287)
II.L am (P-22359/93; O-18405/94;W-287)
II.M am (P-22359/93; O-18405/94;W-287)
.Ex.A r (P-22359/93; O-18405/94;W-287)
.Ex.B r (P-22359/93; O-18405/94;W-287)
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